



INTERNATIONAL
JOURNAL OF CRIMINAL
JURISPRUDENCE

VOLUME 1 AND ISSUE 1 OF 2023

INSTITUTE OF LEGAL EDUCATION





International Journal of Criminal Jurisprudence

(Free Publication and Open Access Journal)

Journal's Home Page – <https://ijcj.iledu.in/>

Journal's Editorial Page – <https://ijcj.iledu.in/editorial-board/>

Volume 1 and Issue 1 (Access Full Issue on – <https://ijcj.iledu.in/category/p-volume-1-and-issue-1-of-2023/>)

Publisher

Prasanna S,

Chairman of Institute of Legal Education (Established by I.L.E. Educational Trust)

No. 08, Arul Nagar, Seera Thoppu,

Maudhanda Kurichi, Srirangam,

Tiruchirappalli – 620102

Phone : +91 94896 71437 – info@iledu.in / Chairman@iledu.in



© Institute of Legal Education

Copyright Disclaimer: All rights are reserve with Institute of Legal Education. No part of the material published on this website (Articles or Research Papers including those published in this journal) may be reproduced, distributed, or transmitted in any form or by any means, including photocopying, recording, or other electronic or mechanical methods, without the prior written permission of the publisher. For more details refer <https://ijcj.iledu.in/terms-and-condition/>



A Legal Aspect of Witness Protection in India

Author : Rajib Ali, Student of Faculty of Law,
University of Delhi, Delhi.

Best Citation – Rajib Ali, A Legal Aspect of
Witness Protection in India, INTERNATIONAL
JOURNAL OF CRIMINAL JURISPRUDENCE, 1 (1) of
2023, Pg. 15-20, ISBN (P) - 978-81-960702-2-9.

ABSTRACT

Anyone with knowledge or documentation of any crime can be considered a witness. The courts capacity to punish the guilty party and provide justice to the victim can be used to assess the effectiveness of criminal justice administration. Courts rely on the evidence presented by the parties in oral or written form for determining guilt. By using testimonies from witnesses, the proof is presented. For the courts to prove the guilt of the accused, witnesses are a crucial source of information. Courts are better able to make wise decisions thanks to witness testimonies. The witness is therefore crucial. Because of this, Whittaker Chambers stated, "In search of truth, he plays that sacred role of the sun, which eliminates the darkness of ignorance and illuminates the face of justice, encircled by devils of humanity and compassion."²³ Day by day, the court system's management of witnesses is becoming terrible. In the Lakhimpur Kheri case, only 23 eyewitnesses were found out of hundreds of gatherers, which surprised the Indian Supreme Court recently. The Malimath Committee stated in its report 2003 that, "By giving evidence relating to the commission of an offence, he performs a sacred duty of assisting the court to discover the truth."²⁴ Why

would anyone volunteer to carry out such a sacred obligation if they knew that doing so would endanger their lives, families, reputations, and property. Because of all these incidents, witnesses are afraid to testify in court and frequently become hostile as a result. The challenges that the witness encountered during the trial were noted by the Law Commission of India in its different reports and by the Supreme Court of India in its several rulings, who both advocated the adoption of a thorough policy on witness protection. I will go through the necessity of witness protection, as well as the laws and programmes in India that are relevant to it, in this research article.

Keywords: Witness, Supreme Court, Criminal justice system, Law Commission of India, Evidence.

Introduction

In criminal justice system, the witness is a crucial component. One of the most crucial parts of the criminal justice system is acknowledged to be the witness. As Jeremy Bentham said, "witnesses are the eyes and ears of justice." They are responsible for the trial's ability to come to a logical conclusion or to provide a fair verdict. Whether a case is civil or criminal, witnesses form the basis of the proceedings. As required by Article 21 of the Indian constitution, witness protection is one of the elements of a fair trial. When compared to other topics, witness protection is not a topic that receives much attention in India, despite being unfair and incorrect.

Neither the Indian Evidence Act of 1872 nor the Code of Criminal Procedure, of 1973, provide a definition of the term "witness." According to The Black's Law Dictionary Witness is described as, "Witness is one who sees, knows or vouches for something or one who gives testimony, under oath or affirmation in person or by oral or written deposition, or by affidavit".

²³ SCC Online,
<https://www.scconline.com/blog/post/2018/12/07/sc-approves-witness-protection-scheme-2018-directs-setting-up-of-vulnerable-witness-deposition-complexes-in-all-district-courts/> (last visited Feb. 9, 2023)

²⁴ Witness Protection scheme, 2018,
https://www.mha.gov.in/sites/default/files/2022-08/Documents_PolNGuide_finalWPS_08072019%5B1%5D.pdf (last visited Feb. 9, 2023)



In the case of *Neelam Katara v. Union of India* (2003)²⁵, Hon'ble Delhi High Court described the witness as, "Witness means a person whose statement has been recorded by the investigating officer under section 161 Cr.p.c. Pertaining to a crime punishable with death or life imprisonment."

Further, "Witness Protection Scheme, 2018" described a witness as, "Witness means any person, who possesses information or document about any offence."²⁶

Importance and need of witness protection

For a fair trial, the importance of the witness cannot be neglected. The condition of witnesses is the plight. In the cases of *State of U.P. v. Shambhu Nath Singh & Ors.* (2001)²⁷ and *N. G. Dastane v. Shrikant S. Shivde & Anr.* (2001)²⁸, the Supreme Court discussed the precarious situation of witnesses. Witnesses become hostile in cases involving heinous crimes because of the danger to their lives and property. Witnesses believe that the State is not required by law to provide them with any form of protection.

In 1958, the Law Commission of India's 14th Report made the first-ever mention of witness protection in India. The Law Commission of India's 154th and 178th reports have additional references on the topic. The topic is covered in the 198th Report of the Law Commission of India, which is titled "witness identity protection and witness protection programmes, 2006." According to the 1980, Fourth National Police Commission Report, prosecution witnesses are becoming hostile due to the accused's pressure, and regulations are needed to prevent witness manipulation.²⁹

The Malimath Committee Report also advocated for a strong witness protection mechanism, stating that courts should be prepared to intervene if a witness is harassed while being cross-examined.

In *State of Gujarat v. Anirudh Singh* (1997)³⁰, the Hon'ble Supreme Court of India held that it is every witness's "saintly responsibility" to aid the state in providing evidence if they have knowledge of the crime's commission.

In *Swarn Singh v. State of Punjab* (2000)³¹, Justice Wadhwa made a statement, "A criminal case is built on the edifice of evidence, evidence that is admissible in Law. For that witnesses are required, whether it is direct evidence or circumstantial evidence. Here are the witnesses who are harassed a lot.... not only that witness is threatened, he is abducted, he is maimed, he is done away with or even bribed. There is no protection for him."

The Delhi High Court emphasized the need of witness protection in the case *Neelam Katara v. Union of India* (2003)³². Before coming to its conclusion, the High Court considered numerous studies by law commissions and witness protection laws in other countries. It then made recommendations until the Delhi government passed a suitable statute. Depending on the seriousness of the threat, police personnel are required by the rules to give the witness the proper level of protection.

In the case *Zahira Habibulla H. Shiekh and Another v. State of Gujarat* (2004)³³, Also known as the Best Bakery case, the Hon'ble Supreme Court stated, "If the witnesses get threatened or are forced to give false evidence, that also would not result in a fair trial." Denying the accused a fair trial causes injustice to them

²⁵ Mrs. Neelam Katara v. Union of India, ILR (2003) II DEL 377

²⁶ Witness Protection scheme, 2018, https://www.mha.gov.in/sites/default/files/2022-08/Documents_PolNGuide_finalWPS_08072019%5B1%5D.pdf (last visited Feb. 9, 2023)

²⁷ State Of U.P v. Shambhu Nath Singh And Ors., (2001) 4 SCC 667

²⁸ N.G. Dastane v. Shrikant S. Shivde And Anr., (2001) 6 SCC 135

²⁹ Witness Protection scheme, 2018, [https://www.mha.gov.in/sites/default/files/2022-](https://www.mha.gov.in/sites/default/files/2022-08/Documents_PolNGuide_finalWPS_08072019%5B1%5D.pdf)

[08/Documents_PolNGuide_finalWPS_08072019%5B1%5D.pdf](https://www.mha.gov.in/sites/default/files/2022-08/Documents_PolNGuide_finalWPS_08072019%5B1%5D.pdf) (last visited Feb. 9, 2023)

³⁰ State Of Gujarat v. Anirudh Singh And Another, (1997) 6 SCC 514

³¹ Swaran Singh v. State Of Punjab, AIR 2000 SC 2017

³² Mrs. Neelam Katara v. Union of India, ILR (2003) II DEL 377

³³ Zahira Habibullah Sheikh & Anr v. State Of Gujarat & Ors., 2004 (4) SCC 158



in the same way that it causes injustice to the victim and society.

Maintaining the rule of law depends on witnesses being able to testify in court or work with investigators and law enforcement officials without being afraid of intimidation or retaliation. In order to help law enforcement and judicial authorities, witnesses must be given the assurance that they are completely safe before coming forward. The purpose of witness protection is to prevent bias in the course of the criminal investigation, prosecution, and trial.

Laws/Scheme related to Witness Protection in India

In 2006, the legislature passed section 195A of the Indian Penal Code, making it a crime to intimidate witnesses and subjecting the offender to a seven-year prison sentence. Similarly, laws such as the Juvenile Justice (Care and Protection of Children) Act, 2015, Whistle Blowers Protection Act, 2011, Protection of Children from Sexual Offences (POCSO) Act, 2012, National Investigation Agency Act, 2008, and Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989, all contain provisions for protecting witnesses from harm.³⁴

The witness protection scheme was issued in 2018 by the Ministry of Home Affairs. The government of India has released it as its first official legal document to safeguard witnesses. With cooperation from states/Union Territories, National Legal Services Authorities, civic society, High Courts, and police officers, the Centre developed the Scheme in 2018.

The witness protection scheme, 2018 was recognized and approved by the Honourable Supreme Court of India in the case Mahender Chawla & Ors. v. Union of India &

Ors.³⁵ Dated December 5, 2018. According to the Supreme Court, Article 21 guarantees witnesses their right to testify freely in court (Right to Life). The court ruled that until appropriate parliamentary and/or state laws on the issue are passed, the scheme shall be governed by Article 141/142 of the Constitution. Additionally, the court ordered that vulnerable witness deposition complexes be built in every state and union territory by the end of 2019 in accordance with the Scheme's requirements. To avoid the accused and witness coming face to face, these chambers would be furnished with necessary amenities.

Some key elements of the Witness Protection Scheme, 2018 :-

A. Categories of witnesses based on perceived threat³⁶ :-

According to perceived threat, the Scheme's classifies witnesses into three categories:

Category A: Situations in which there is a threat to a witness's life or the lives of their family members throughout the course of the investigation, the trial, or even after.

Category B: Situations where the witness's safety, reputation, or property during the inquiry or trial is threatened.

Category C: Situations in which a moderate threat results in harassment or intimidation of the witness or his family, reputation, or property during the investigation, trial, or afterward.

B. State witness protection fund³⁷ :-

- A Witness Protection Fund that will be established by the States and Union

³⁴ Witness Protection scheme, 2018, https://www.mha.gov.in/sites/default/files/2022-08/Documents_PoLNGuide_finalWPS_08072019%5B1%5D.pdf (last visited Feb. 9, 2023)

³⁵ Mahender Chawla & Ors . v. Union of India & Ors. (5 December 2018),

https://main.sci.gov.in/supremecourt/2016/34388/34388_2016_3_1501_10737_Judgement_05-Dec-2018.pdf (last visited Feb 9, 2023)

³⁶ Witness Protection scheme, 2018, https://www.mha.gov.in/sites/default/files/2022-08/Documents_PoLNGuide_finalWPS_08072019%5B1%5D.pdf (last visited Feb. 9, 2023)

³⁷ Supra Note 14



Territories will be used to pay for the Scheme's expenses.

- The states will allocate money each year from their budgets for the fund.
- Additionally, the Fund should be unrestricted in its acceptance of contributions from domestic and foreign philanthropic organisations as well as sums given as part of corporate social responsibility.
- The Home Department/Ministry of the State/UT Government shall be in charge of managing the aforementioned Fund.

C. Types of protection measures³⁸:-

The court must specify a time limit for the witness protection measures ordered, which cannot be longer than three months at a time and must be reasonable to the threat. Among them could be:-

- preventing the witness and the accused from speaking face-to-face while the investigation is ongoing or during the trial;
- keeping track of mail and phone calls; negotiating with the telephone provider to have the witness's number changed or given an unlisted number;
- Adding security features to the witness's residence, such as security doors, CCTV, alarms, and fences;
- Hiding the witness's identity by using a different name or alphabet;
- The witness's emergency contacts;
- Constant patrolling of the area surrounding his or her home;
- A temporary move to a relative's home or another neighbouring town;
- Providing a government car or a state-funded means of transportation for the hearing date, as well as providing an escort to and from the court;
- Holding of closed-door trials;

- Permitting a support person to be present during the taking of statements and depositions;
- Utilizing specially equipped courtrooms for vulnerable witnesses;
- Ensuring prompt deposition recording during trial on a daily basis without adjournments;
- Giving the witness periodic financial assistance/grants from the witness protection Fund for the purposes of relocation, sustaining themselves, or beginning a new career/profession, as may be deemed essential.
- Any further safety precautions deemed necessary.

D. Protection of identity³⁹:-

An application for identity protection may be submitted to the relevant authority through its members secretary during the course of an investigation or prosecution for any crime in the required form.

The competent authority's Member Secretary must request the Threat Analysis Report after receiving the application. To determine if an identity protection order needs to be passed, the competent authority must interview the witness, any members of his family, and any other person it deems appropriate.

E. Change of Identity⁴⁰:-

The competent Authority may decide to grant the witness a new identity when circumstances call for it, such as when the witness requests a change of identity and the decision is based on the Threat Analysis Report.

Giving new identities involves changing one's name, occupation, parentage, and supplying supporting documentation that is accepted by government institutions. The

³⁸ Supra Note 14

³⁹ Supra Note 14
⁴⁰ Supra Note 14



witness's current educational, professional, and property rights should not be violated by the new identities.

F. Relocation of Witness⁴¹ :-

The competent Authority may decide to relocate the witness in the appropriate circumstances, in response to a request for relocation from the witness and in light of the Threat Analysis Report.

A relocation order for a witness may be issued by the competent authority while keeping in mind the witness's safety, welfare, and general well-being within a State, Union Territory, or other area of India. The cost will be covered by the Witness Protection Fund.

Conclusion

Organized crime, fanaticism, and terrorism have all gotten stronger and more varied in recent years. Witness confidence in the criminal justice system is crucial for the investigation and prosecution of such crimes. To help law, police, and prosecutors, witnesses must feel confident enough to speak up. To encourage them to cooperating with law enforcement and testifying in court, they need to be given the assurance that they would be supported and protected from intimidation and any harm that criminal organizations may try to inflict upon them. The witness protection scheme, 2018 is a positive start in restoring the confidence of witnesses in the nation's criminal justice system.

According to Socrates, Justice is more than just acting in our own self-interest or favoring our friends and harming our adversaries. The welfare of everyone is a component of justice. Just as a doctor is interested in the health of the people they treat. The welfare of the populace must also be a priority for the just ruler or government. Giving

each person his due is a necessary part of ensuring the well-being of the populace. Therefore, the government should concentrate on the appropriate execution of the Scheme to ensure that the Rule of Law is upheld in its genuine essence and that the ideals of justice are maintained, as conceived by our Constitution.

REFERENCES

1. SCC Online, <https://www.scconline.com/blog/post/2018/12/07/sc-approves-witness-protection-scheme-2018-directs-setting-up-of-vulnerable-witness-deposition-complexes-in-all-district-courts/> (last visited Feb. 9, 2023).
2. Witness Protection scheme, 2018, https://www.mha.gov.in/sites/default/files/2022-08/Documents_PoINGuide_finalWPS_08072019%5B1%5D.pdf (last visited Feb. 9, 2023).
3. Mrs. Neelam Katara v. Union of India , ILR (2003) II DEL 377.
4. Witness Protection scheme, 2018, https://www.mha.gov.in/sites/default/files/2022-08/Documents_PoINGuide_finalWPS_08072019%5B1%5D.pdf (last visited Feb. 9, 2023).
5. State Of U.P v. Shambhu Nath Singh And Ors., (2001) 4 SCC 66.
6. N.G. Dastane v. Shrikant S. Shivde And Anr., (2001) 6 SCC 135.
7. Witness Protection scheme, 2018, https://www.mha.gov.in/sites/default/files/2022-08/Documents_PoINGuide_finalWPS_08072019%5B1%5D.pdf (last visited Feb. 9, 2023).
8. State Of Gujarat v. Anirudh Singh And Another, (1997) 6 SCC 514.
9. Swaran Singh v. State Of Punjab , AIR 2000 SC 2017.
10. Mrs. Neelam Katara v. Union of India , ILR (2003) II DEL 377.

⁴¹ Supra Note 14



11. Zahira Habibullah Sheikh & Anr v. State Of Gujarat & Ors.,2004 (4) SCC 158.
12. Witness Protection scheme, 2018, https://www.mha.gov.in/sites/default/files/2022-08/Documents_PoINGuide_finalWPS_08072019%5B1%5D.pdf (last visited Feb. 9, 2023).
13. Mahender Chawla & Ors . v. Union of India & Ors. (5 December 2018), https://main.sci.gov.in/supremecourt/2016/34388/34388_2016_3_1501_10737_Judgement_05-Dec-2018.pdf(last visited Feb 9, 2023).
14. Witness Protection scheme, 2018, https://www.mha.gov.in/sites/default/files/2022-08/Documents_PoINGuide_finalWPS_08072019%5B1%5D.pdf (last visited Feb. 9, 2023).
15. Witness Protection scheme, 2018, https://www.mha.gov.in/sites/default/files/2022-08/Documents_PoINGuide_finalWPS_08072019%5B1%5D.pdf (last visited Feb. 9, 2023).
16. Witness Protection scheme, 2018, https://www.mha.gov.in/sites/default/files/2022-08/Documents_PoINGuide_finalWPS_08072019%5B1%5D.pdf (last visited Feb. 9, 2023).
17. Witness Protection scheme, 2018, https://www.mha.gov.in/sites/default/files/2022-08/Documents_PoINGuide_finalWPS_08072019%5B1%5D.pdf (last visited Feb. 9, 2023).
18. Witness Protection scheme, 2018, https://www.mha.gov.in/sites/default/files/2022-08/Documents_PoINGuide_finalWPS_08072019%5B1%5D.pdf (last visited Feb. 9, 2023).
19. Witness Protection scheme, 2018, https://www.mha.gov.in/sites/default/files/2022-08/Documents_PoINGuide_finalWPS_08072019%5B1%5D.pdf