
TRUTH ON TRAIL: A CRITICAL STUDY OF WITNESS PROTECTION IN INDIA

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ABSTRACT

The effective functioning of India's criminal justice system hinges significantly on the safety and cooperation of witnesses, who are often the linchpin in establishing truth and securing convictions. Despite their pivotal role, witnesses in India frequently face severe threats, intimidation, and pressure, leading to hostile testimonies, acquittals, and a pervasive erosion of public trust in judicial processes. This paper, "Truth on Trial: A Critical Study of Witness Protection in India," critically examines the evolution, efficacy, and challenges of witness protection measures, particularly focusing on the Witness Protection Scheme, 2018.

Through a comprehensive analysis of legislative efforts, landmark judicial pronouncements, and the scheme's practical implementation, this study identifies its strengths, notably its formal framework and diverse protective measures. However, it argues that the scheme's non-statutory nature, implementation hurdles, funding constraints, and lack of uniform application across states significantly undermine its effectiveness. The paper delves into the ground realities of witness intimidation and the systemic vulnerabilities that persist, highlighting the disconnect between policy intent and actual outcomes. Ultimately, this research underscores the urgent need for a robust statutory framework, dedicated resources, and enhanced public awareness to safeguard witnesses, thereby fortifying the pursuit of justice and upholding the rule of law in India.

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INTRODUCTION

Can justice truly prevail when the very individuals essential to its delivery live in fear? In a legal system built on the pillars of evidence and testimony, the **vulnerability of witnesses** poses a profound challenge to the pursuit of truth. The phrase "truth on trial" aptly encapsulates the precarious position of justice in India, where the integrity of criminal proceedings is frequently undermined by the **intimidation, harassment, and coercion of witnesses**. This insidious phenomenon not only obstructs the administration of justice but also erodes public trust in the judiciary, fostering an environment where perpetrators often evade accountability.

Witnesses are the eyes and ears of justice. Their honest and fearless testimony is indispensable for proving facts, establishing guilt, and ensuring fair trials. However, in the Indian context, a deeply ingrained culture of fear, coupled with socio-economic disparities and systemic loopholes, renders witnesses highly susceptible to external pressures. Landmark cases such as the Jessica Lal and Best Bakery incidents vividly illustrated how witness hostility, often a direct consequence of inadequate protection, could derail convictions and lead to widespread acquittals. These instances, widely reported and debated, ignited a national discourse on the urgent need for a robust and comprehensive witness protection mechanism.

Responding to persistent judicial directives and mounting public demand, the Indian government introduced the **Witness Protection Scheme, 2018**. This scheme, emerging from a significant Supreme Court directive in *Mahender Chawla v. Union of India*, marked a pivotal, albeit non-statutory, step towards creating a formal framework for safeguarding witnesses. It outlines various protective measures, categorizes witnesses based on threat perception, and establishes a procedural mechanism for granting protection.

Despite these efforts, the journey towards truly effective witness protection in India remains fraught with challenges. This paper, "Truth on Trial: A Critical Study of Witness Protection in

India," aims to critically examine the **evolution, efficacy, and ongoing challenges** of witness protection measures, with a particular focus on the Witness Protection Scheme, 2018. It argues that while the 2018 Scheme is a commendable foundational step, its **non-statutory nature, coupled with significant implementation hurdles, resource constraints, and varying degrees of state-level adoption**, severely limits its practical impact and fails to adequately secure the safety of witnesses, thereby impeding the attainment of justice.

Through a comprehensive analysis of the historical context of witness vulnerability, the legal and policy framework governing witness protection in India, and a critical appraisal of the 2018 Scheme's practical application, this study seeks to identify the disconnect between policy intent and ground realities. Furthermore, it will explore the systemic vulnerabilities faced by witnesses and offer substantive recommendations for strengthening the witness protection framework, aiming to ensure that the pursuit of truth in Indian courts is no longer perpetually "on trial."

RESEARCH METHODOLOGY

This paper primarily uses a **doctrinal research methodology**, analyzing existing legal provisions, landmark judicial decisions, and policy documents, especially the Witness Protection Scheme, 2018. It involves a critical and analytical approach to evaluate the scheme's effectiveness and implementation challenges. Data is collected from primary legal sources (statutes, case law) and secondary sources (Law Commission reports, academic articles). The analysis aims to identify gaps and propose recommendations for a more robust witness protection framework in India.

MEANING OF WITNESS

A **witness** in law is an individual who possesses personal knowledge of facts or events relevant to a legal case and provides sworn testimony or evidence to a court or tribunal. Governed by the Indian Evidence Act, 1872 (primarily Section 118), witnesses are considered the "eyes and ears of justice" as their accounts are crucial for establishing facts, identifying parties, and guiding judicial decisions. They can be eyewitnesses, expert witnesses, or even those who turn "hostile" by

contradicting their own previous statements. Their ability to depose truthfully and without fear is fundamental to the integrity and effectiveness of the justice system.

TYPES OF WITNESSES (COMMON CLASSIFICATIONS):

- **Eyewitness:** Directly observed the event in question.
- **Expert Witness:** Possesses specialized knowledge or skills (e.g., forensic expert, doctor) and can provide an opinion to assist the court.
- **Hostile Witness:** A witness who, when called by a party (e.g., prosecution), gives testimony that is unexpectedly adverse or contradictory to their previous statements. This is a major concern in Indian trials.
- **Victim Witness:** The person who suffered the crime and also testifies about it.
- **Chance Witness:** Someone who happened to be at the scene by coincidence.
- **Accomplice Witness (Section 133, IEA):** A person involved in the crime who testifies against their co-accused. Their testimony is admissible, though typically requires corroboration.

IMPORTANCE OF WITNESS PROTECTION

The bedrock of any adversarial legal system, including India's, rests upon the principle of truth ascertainment, largely facilitated by the **testimony of witnesses**. In legal parlance, a witness is fundamentally a person who possesses personal knowledge of facts or events pertinent to a legal proceeding and provides evidence – oral, written, or by signs – about that knowledge before a court or tribunal. While the Indian Evidence Act, 1872, does not offer a specific definition, Section 118 broadly outlines **competency to testify**, stating that all persons are competent unless the court determines they are prevented from understanding questions or giving rational answers due to

factors like tender age, extreme old age, or mental infirmity. This broad scope highlights the inclusive nature of who can contribute to the judicial process.

Witnesses serve as the "eyes and ears of justice," their accounts bringing the factual narrative of a case to life. Their evidence, whether direct observations (eyewitnesses) or expert opinions (expert witnesses), forms the crucial evidentiary link that enables courts to reconstruct events, identify perpetrators, and ultimately arrive at just decisions. Without credible and unbiased witness testimony, cases often lack the foundational proof required for conviction, leading to miscarriages of justice and undermining the very purpose of legal proceedings. This indispensable role places an immense responsibility on witnesses, making their safety and willingness to depose truthfully paramount to the integrity and effectiveness of the entire criminal justice system.

CHALLENGES FACED BY WITNESSES IN INDIA

Although witnesses are critically important for justice, their passage through India's judicial system is fraught with grave danger. Witnesses are usually subjected to tremendous pressure and immense fear, which can deter them from speaking the complete truth. This fear not only jeopardizes the witness personally; it critically handicaps the whole concept of a fair trial.

Types of Threats and Harassment

Direct Threats: This is the most frightening. Witnesses or their loved ones could be threatened with violence against themselves, damage to their property, or even murder.

Financial Temptations: At times, money can be an effective tool. Witnesses, particularly those who are impoverished, might be bribed to alter their testimony or simply vanish.

Social Pressure: Within most communities, particularly in smaller communities or villages, witnesses might be pressured by influential groups or even their own community to drop the case or modify what they understand. This might result in their being ostracized or isolated.

Courtroom Harassment: Even within the court room, which should be a haven, witnesses may be frightened. Bullying questions, embarrassing comments, or endless psychological harassment by the opposing lawyer can exhaust a witness.

False Cases: One of the most common methods is to lodge false counter-cases against the witness. This compels them to engage in their own courtroom battles, losing their time and resources, and giving them second thoughts about giving their testimony.

SOCIAL AND ECONOMIC FACTORS POTENTIATING WITNESSES VULNERABILITY

- **Poverty and Limited Education:** Poor witnesses or poorly educated witnesses are usually softer to bribe. They may also not be aware of their rights in the law or where to seek assistance, rendering them vulnerable to manipulation by interested parties.
- **Age and Gender:** Women and children are most at risk. Child witnesses are easily confused or frightened. Women tend to receive additional social stigma, re-traumatization, and special emotional burdens, particularly in sexual assault cases.
- **Social Caste and Class Distinctions:** Marginalized community or lower-class witnesses are more readily intimidated by individuals in positions of power, who use such social distinctions.
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JUDICIAL INTERVENTION AND RELATED CASES

In a crucial way, it was the continued assertion of judicial authority that emerged as the principal driver of change. Ground-breaking rulings by the Supreme Court of India irresistibly placed the issue squarely in front of the legislature, pointing to the systemic failings and calling for action:

- **State of Gujarat v. Anirudh Singh (1997):** The case emphasized the basic responsibility of every witness to provide assistance to the state by providing evidence. The Supreme Court noted the alarming trend of hostile witnesses, as a result of fear in many cases, and explicitly enunciated the requirement for the state to provide protection to them. This judgment was an early warning, reiterating that such occurrences generate disbelief in the effectiveness of the criminal justice system and call for immediate legislative and executive action.

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- **Zahira Habibullah Sheikh & Anr. v. State of Gujarat (2004)-The Best Bakery Case:**
It is a landmark judgment, documenting the disastrous effects of poor witness protection. In this very prominent case, witnesses like the main eyewitness Zahira recanted, claiming they were coached and intimidated. The Supreme Court was deep in dismay, seriously condemning the glaring failure to safeguard witnesses, which clearly resulted in their recantation and the accused persons being acquitted. The Court's piercing remarks highlighted the systemic collapse of the justice delivery system and made forceful recommendations for the passage of a robust witness protection law, reiterating the fact that the integrity of a fair trial is inextricably connected with the capacity of witnesses to give evidence without fear. The court quoted Jeremy Bentham famously when it said that "witnesses are the eyes and ears of justice."
 - **Mahender Chawla v Union of India (2018):** This persistent judicial pressure reached its culmination in this case. Conscious of the persistent legislative void, as well as the repeated failures evidenced in earlier cases, the Supreme Court took a radical and historic decision. It officially recognized and approved the Draft Witness Protection Scheme, 2018, painstakingly drafted by the National Legal Services Authority (NALSA) after consulting at extensive lengths. By directing its nationwide implementation by both Union and State Governments, the Supreme Court effectively elevated a draft proposal into a binding framework, marking the most significant, albeit judicially mandated, step towards a formalized witness protection system in India. The Court pointed out that witnesses go hostile in cases relating to powerful individuals because of threats to life and property, and since they see no legal imperative on the state to ensure security.

This historical path demonstrates that India's witness protection scheme did not result from a planned legislative action but was instead a reactive one, continually driven and eventually reinforced by court intervention in the wake of proven shortfalls in enforcing the rule of law.

Understanding the Witness Protection Scheme, 2018

The Witness Protection Scheme, 2018 (WPS 2018), which was officially announced by the Home Ministry and approved by the Supreme Court, is India's first formal attempt to create a complete plan for witness safety. Even though it's ordered by the court and not a full law passed by Parliament, it aims to fill the long-standing gap in legal safeguards. Its main goal is to ensure witnesses can give their statements without any fear, stopping them from changing their minds because of threats.

The WPS 2018 is a detailed plan that outlines various ways to protect witnesses:

- **Main Goal:** Its most important aim is to allow witnesses to speak truthfully without being scared. This helps to prevent them from becoming "hostile" (changing their story) because they are threatened or intimidated.
- **Types of Witnesses and Threat Levels (Part III of the Scheme):** The scheme divides witnesses into three groups based on how serious the threat to them is. This helps in deciding what kind of protection is needed:

Category A: For witnesses whose life or their family's life is in immediate and serious danger during the investigation, trial, or even after the case is over.

Category B: For witnesses facing threats to their safety, good name, or property (or their family's).

Category C: For witnesses facing less serious threats, like simple harassment or minor intimidation. This way of dividing threats is very important because it decides how much and what kind of protection a witness gets.

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- **How to Apply and Get Assessed (Part IV of the Scheme):**

A witness, their family, or their lawyer can apply for witness protection. The police or public prosecutor can also start this process.

The application is usually sent to the Witness Protection Cell (WPC), which is supposed to be set up in every district under the police chief (Superintendent of Police or Deputy Commissioner of Police).

After getting the application, the WPC creates a Threat Analysis Report. This report looks at how serious the threat is, who is making the threat, how vulnerable the witness is, and how important their testimony is to the case.

Then, the Competent Authority reviews the application and the Threat Analysis Report. This Authority is usually made up of the District and Sessions Judge (as the head), along with the police chief and the head of the District Legal Services Authority. They decide what protection measures are needed.

Finally, a Witness Protection Order is issued, which clearly lists the specific ways the witness will be protected.

- **Types of Protection Available (Part V of the Scheme):** The scheme offers many different ways to protect witnesses, which can be combined as needed:

Keeping their identity secret by using screens in court, hiding their face, or changing their voice during testimony. While the Bharatiya Sakshya Adhiniyam (BSA), replacing the old Evidence Act, focuses on rules of evidence, these procedural protections ensure that evidence can be given safely.

Holding trials in private (in-camera proceedings).

Moving the witness and their family to a safe house or a different place.

In very rare and serious cases, even changing the witness's identity.

Providing security guards at the witness's home.

Arranging temporary living arrangements and financial help for costs like moving or losing income.

Making sure the witness has a safe way to travel to and from court.

Regularly watching suspicious people and keeping all details about the witness's identity and protection strictly secret.

- **Funding and Management (Part VI of the Scheme):** The scheme says that every State and Union Territory must create a special "Witness Protection Fund." This fund is supposed to get money from government budgets (both central and state). This rule aims to make sure that lack of money doesn't stop protection from being given.
- **Checking and Ending Protection (Part VII of the Scheme):** Protection measures are not forever. The Competent Authority must regularly check if the protection is still needed. The protection can be changed or stopped if the threat goes away or changes a lot

CONCLUSION

In India, witnesses' ongoing vulnerability continues to be a serious problem for our legal system. Important witnesses are often forced to become hostile by threats and intimidation, which compromises impartial proceedings and erodes public confidence. Even though the Supreme Court's orders in *Mahender Chawla v. Union of India* (2018) created the Witness Protection Scheme, 2018 (WPS 2018), which established a formal framework for protection, was a major step forward, there are still obstacles because it is a "scheme" rather than a specific parliamentary law.

Notwithstanding the recent revisions to criminal laws brought about by the Bharatiya Nyaya Sanhita (BNS), Bharatiya Nagarik Suraksha Sanhita (BNSS), and Bharatiya Sakshya Adhiniyam (BSA), these new laws do not essentially establish a comprehensive, stand-alone witness protection mechanism, even though they modernize definitions and procedures. WPS 2018 still mainly depends on the structure set up by the judicial scheme, even though BNSS, in particular, requires State Governments to create and announce a Witness Protection Scheme (Section 398 BNSS), so providing it with a statutory foundation. Ensuring strong, steady funding, sufficient infrastructure, and consistent execution throughout the several states continues to be the main problem. It is crucial to make sure witnesses can testify without fear if justice is to be served. The

very foundation of India's judicial integrity must be strengthened by moving toward a more robust, legislatively supported, and well-resourced witness protection program that goes beyond its current state as a simple scheme.

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