



BEYOND JUDICIAL GUIDELINES: THE CASE FOR A STATUTORY WITNESS PROTECTION LAW IN INDIAN CRIMINAL TRIALS

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ABSTRACT

Witness protection is an essential, yet insufficiently institutionalised element of India's criminal justice system. The Supreme Court has attempted to address witness vulnerability through judicial guidelines and through the Witness Protection Scheme, 2018.¹ The absence of a statutory framework continues to expose witnesses to intimidation and coercion. Reliance on non-statutory mechanisms has led to inconsistent implications, executive discretion and uneven protection across jurisdictions, which have contributed to hostile testimonies and delayed trials. This paper examines the existing judicial framework and safeguards for the witnesses and highlights the limitations in the existing framework because of the absence of legislative backing. In furtherance, it also analyses the guarantee of fair trial that is guaranteed by the constitution under Article 21.² Moreover, it also shows how other jurisdictions like the United States, the United Kingdom and Australia are used to demonstrate how statutory witness protection regimes provide clarity, uniformity and effective enforcement. The study argues for a judicial statutory framework and the enactment of a statutory witness protection law to strengthen the credibility and effectiveness of criminal trials in India.

Keywords: Supreme Court, Witness Protection Scheme, 2018, Article 21, United States, United Kingdom.

INTRODUCTION

In recent times, India has taken several steps to strengthen its criminal justice system by increasing its emphasis on fair trials and effective prosecution. The central role in criminal proceedings is of the witnesses; their testimony often determines the outcome of criminal

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¹ Witness Protection Scheme, 2018

² Constitution of India 1950, art 21

proceedings. Noticing the vulnerability of witnesses to intimidation, coercion and retaliation, the Supreme Court introduced the Witness Protection Scheme, 2018, with the aim to protect witnesses and reinforce confidence in the trial process. Thus, witness protection was envisioned as a key reform to enhance the credibility of criminal adjudication. With many broad reforms, the effectiveness of witness protection totally depends on its practical application. Witnesses do not face the same or uniform level of threats or risks within the criminal process; some testify without consequence, while others, particularly in greater crimes such as rape, murder or cases which are sensitive and serious in nature, face a greater risk regarding their safety and dignity. The absence of a statutory framework has led to an uneven implementation and reliance on executive discretion rather than enforceable legal rights. This ambiguity not only undermines the confidence of witnesses but also contributes to hostile testimonies and delayed trials. This is also one of the reasons that India has a very low conviction rate. This paper examines whether the present judicial guidelines are sufficient to address the vulnerability of witnesses during criminal trials in India. Through an analysis of criminal law, constitutional principles and comparative practices of other jurisdictions, it seeks to conclude whether the existing framework ensures fair trials or remains a reform marked by structural limitations and whether a statutory framework, along with practical implications, should be brought to strengthen the criminal justice system of India.

RESEARCH OBJECTIVES

Examine the Existing Witness Protection Framework: To analyse the present constitutional, statutory and judicial foundations governing witness protection in India with emphasis on the Witness Protection Scheme, 2018.

Understand the Nature of Witness Vulnerability: To analyse the factors that contribute to witness intimidation, coercion and hostility in criminal proceedings that lead to lower conviction rates in India.

Evaluate Fair Trial and Due Process Implications: To analyse the effectiveness of the existing witness protection measures in maintaining a fair trial under Article 21 while balancing the rights of the accused person or persons.

Identify Implementation Challenges: To analyse the practical and administrative challenges that arise due to the absence of a comprehensive statutory framework and analyse the inconsistent implementation, executive discretion and lack of institutional accountability.

Draw Comparative Insights: To analyse the witness protection measures adopted in other jurisdictions such as the United States, the United Kingdom and Australia and to assess the relevance of such approaches for the Indian criminal justice system.

Recommend Legislative Reforms: To provide recommendations to enact a comprehensive statutory framework for witness protection law in India for uniformity, enforceability and effective protection of witnesses.

RESEARCH QUESTIONS

1. How are the witnesses defined and addressed for witness protection through judicial guidelines and existing procedural mechanisms in the Indian criminal justice system?
2. How effective is the current judicial framework for witness protection in ensuring fairness in criminal trials, particularly in preventing witness intimidation, coercion and hostility?
3. What are the lessons that India can draw from the statutory witness protection of other jurisdictions to develop a comprehensive, transparent and equitable legislative model suited to Indian criminal trials?

RESEARCH METHODOLOGY

In this paper, the study is qualitative and doctrinal in nature. It is analysing the way witness protection is addressed in Indian criminal trials. It is based on constitutional provisions, sections of the Code of Criminal Procedure, and judicial guidelines such as the Witness Protection Scheme, 2018. It also relies on leading judicial decisions, which are supported by Law Commission reports and scholarly literature. The study also includes the content analysis of statutory texts and case law related to fair trial guarantees and witness safety. It also includes international perspectives of witness protection measures in the United Kingdom, the United States and Australia.

LEGAL AND CONSTITUTIONAL FRAMEWORK

The legal and constitutional framework which governs witness protection in India is shaped by judicial interpretation rather than a comprehensive legislative framework. Other jurisdictions, unlike India, treat witness protection as a statutory domain. India addresses the issue of witness protection through a combination of constitutional principles, procedural laws and court-crafted guidelines. This framework reflects that courts are recognising how crucial it is to maintain safety, credibility and willingness to testify from the witnesses to ensure a fair trial.

This shows a progressive shift in judicial thinking. However, this also highlights its weakness because so many protections exist because of judicial creativity rather than a clear, comprehensive statutory and legal framework.

At the constitutional level, the witness protection foundation is under Article 12³ of the Constitution of India, which guarantees the right to life and personal liberty. The Supreme court have interpreted Article 21 expansively to include the right to a fair trial, which ensures the ability of a witness to depose freely and without any fear. Intimidation, coercion and retaliation against witnesses undermines the fair trial that Article 21 guarantees, and it also compromises the integrity of evidence and administration of justice. Furthermore, Article 14⁴ mandates equality before the law is also implicated, where witnesses face uneven or arbitrary protection due to the discretionary nature of existing mechanisms. Therefore, these constitutional provisions impose a positive obligation to create conditions for truthful and voluntary testimony.

Despite this constitutional mandate, India lacks a dedicated statute that governs witness protection in the Indian Criminal justice system. The Code of Criminal Procedure, 1973 (CrPC)⁵ contains limited safeguards for witness protection. CrPC has provisions such as in-camera trials under Section 327,⁶ protection of identity in sexual offences cases and powers of the court to ensure orderly proceedings offer partial relief, but it does not contain a coherent protection regime. There are also substantive criminal laws that criminalise threats, obstruction of justice, operate in a reactive manner and fail to provide preventive or institutional protection to vulnerable witnesses.

In the legislative vacuum, the judiciary has played a role in shaping witness protection jurisprudence. Supreme Court's intervention has achieved a significant milestone with its approval of the Witness Protection Scheme, 2018. The scheme categorises witnesses based on the threat perception and prescribed measures that ranged from police protection and relocation to identity concealment. This shows a progressive acknowledgement of the different risks faced by witnesses and the need for adequate responses. However, its non-statutory character limits its enforceability. Due to these, the implementation remains contingent on executive

³ Constitution of India 1950, art 12

⁴ Constitution of India 1950, art 14

⁵ Code of Criminal Procedure 1973

⁶ Code of Criminal Procedure 1973, s 327

willingness and administrative capacity, leading to inconsistent application across States and Union Territories.

The reliance on the judicial guidelines also raises structural concerns. Courts, by their nature, respond to disputes rather than following a uniform, comprehensive policy framework. While judicial creativity has temporarily filled the legislative gap, it lacks institutional clarity, democratic legitimacy and permanence. Clearly defined rights, obligations and accountability mechanisms are absent under a statutory law. This has led to a weakening of the effectiveness of witness protection and leaves critical aspects such as funding, oversight and inter-agency coordination inadequately addressed.

Therefore, the existing legal framework in India for the protection of witnesses is a paradox. On one hand, the constitutional jurisprudence strongly affirms the necessity of protecting witnesses as part of the right to a fair trial. On the other hand, the operational framework remains ad hoc, discretionary and uneven due to the absence of a codification. This shows a need for codification of laws that protect the witnesses in the Indian criminal justice system.

CLASSIFICATION AND VULNERABILITY OF WITNESSES IN THE INDIAN CRIMINAL JUSTICE SYSTEM

Witnesses in the criminal trials are not of the same category. Their vulnerability varies significantly depending on the nature of the offence, identity, power of the accused and socio-economic position of the witnesses. The witnesses in the Indian criminal justice system have always been treated as a homogenous group with minimal differentiation in terms of protection and support. This lack of clarification hides the layered risks faced by the different categories of witnesses and contributes to the problem of intimidation, hostility and withdrawal from the judicial processes.

Furthermore, witnesses may be classified according to the degree of risk they face. At one end, there are ordinary or incidental witnesses whose involvement is limited and who are not exposed to significant threats. At the other end, there are vulnerable witnesses, including those who testify to serious crimes like organised crime, terrorism, political violence, sexual offences, and communal riots. The witnesses who testify to serious crimes are more likely to face coercion, social ostracism, economic pressure and physical harm. Their vulnerability is not only legal but also deeply social, arising from community pressures, familial dependence, caste or gender hierarchies and economic precarity.

The second important basis of classification is the nature of the offence. Cases which are serious in nature, like violent crimes, trafficking, corruption or offences involving large financial or political interests, often confront sustained or systematic intimidation. While in minor offences or routine disputes, the risks are comparatively lower. Yet, the procedural law makes little distinction and uses a "one-size-fits-all" approach, which results in a failed response to the specific needs of high-risk witnesses.

Vulnerability is also shaped by the personal characteristics of witnesses. Some witnesses, such as children, women, victims of sexual offences, members of marginalised communities and economically dependent witnesses, often face a heightened risk of retaliation and psychological harm. For such witnesses, testifying can involve not only fear of physical harm but can also lead to stigma, loss of livelihood and social exclusion. The criminal process, which frequently requires repeated appearances, cross-examination and public disclosure of identity, can itself become a source of secondary victimisation.

The absence of a statutory framework classification means that vulnerability is rarely assessed systematically. Although the Witness Protection Scheme, 2018, introduces threat-based categories, its implementation remains uneven and discretionary. In terms of practice, it generally depends on the police assessment, judicial sensitivity and the executive priorities rather than a uniform legal criterion. This leads to inconsistencies in the protection of the witnesses in similar situations.

This lack of a structured framework classification has serious implications. It discourages the witnesses from coming forward and testifying to the crimes and criminals, which leads to hostile witnesses and weakens the evidentiary foundation of criminal trials. Furthermore, it undermines the fairness of the process by placing disproportionate burdens on those who are socially and economically vulnerable. Without recognising differentiated risks that the witnesses face, the legal system cannot design proportionate, effective and protective measures.

Therefore, it is essential to classify witnesses based on risk, offence type and personal vulnerability. Such classifications would enable targeted protection, rational allocation of resources and greater consistency in implementation. And it is crucial that vulnerability should be recognised not as an exception but as an integral dimension of witness protection to transform the witnesses from an ad hoc response into a coherent and rights-based component of criminal justice in India.

COMPARATIVE PERSPECTIVE

A comparative examination of witness protection regimes in other jurisdictions reveals how statutory frameworks provide greater protection, which leads to greater certainty, uniformity and effectiveness than guidelines-based approaches. Countries such as the United States, the United Kingdom and Australia have recognised witness protection as a legal entitlement, not merely as an administrative necessity. It is grounded in its legislation, institutional design and rights-based enforcement. These models offer insights into how India might structure a comprehensive statutory regime for its witness protection.

In the United States, witness protection is governed by the Witness Security Program (WITSEC), which is established under the Organised Crime Control Act of 1970⁷ and administrative by the U.S. Marshals Service.⁸ This program provides extensive protection measures such as relocation, identity change, financial assistance and long-term monitoring. Furthermore, the schemes are operated under a statutory mandate that clearly defines eligibility, institutional responsibility and funding mechanisms. This framework facilitates maintaining consistency across states and helps in preventing arbitrary denial of protection. Additionally, Judicial oversight and safeguards also ensure that protection measures do not unduly compromise the rights of the accused.

The United Kingdom also adopts a similar statutory framework approach through the Serious Organised Crime and Police Act, 2005⁹ and there are also subsequent legislations present for governing witness anonymity and special measures. Protection in the United Kingdom is embedded within the criminal procedure framework itself, allowing courts to order anonymity, in-camera hearings and protective arrangements wherever necessary. All the measures are guided by explicit legal standards ensuring proportionality and transparency. The statutory structure also facilitates accountability by enabling witnesses to seek remedies in cases of failure or misuse.

Australia offers a relevant model through the National Witness Protection Program established under the Witness Protection Act, 1994.¹⁰ The Australian framework emphasises risk assessment, inter-agency coordination and long-term sustainability. It combines legal

⁷ Organised Crime Control Act 1970

⁸ United States Marshals Service

⁹ Serious Organised Crime and Police Act 2005

¹⁰ Witness Protection Act 1994

enforceability with administrative flexibility, allowing authorities to tailor protection measures while operating within a clear legislative structure.

These comparative models highlight the three consistent features absent from the Indian Criminal justice system framework. The first one is the legal right rather than a discretionary benefit, which means it would enhance trust and certainty. Secondly, clear allocation of institutional responsibility reduces fragmentation and ambiguity. Thirdly, integration of protection within the criminal justice process itself, ensuring that safeguards are not external add-ons but part of procedural fairness.

India's reliance on judicial guidelines and executive schemes lacks statutory permanence, uniformity and enforceability. While judicial innovation has filled a critical gap, it cannot give institutional depth and accountability to legislation. This comparison shows that effective witness protection requires a legislative foundation statutory framework that includes legal clarity, administrative capacity and ethical safeguards.

Therefore, all these show that India must move beyond the judicial guidelines and should adopt a statutory witness protection framework to ensure its consistent application and protect vulnerable witnesses. The analysis above shows that judicial guidelines have played only a significant role in initiating witnesses in India, but they are structurally inadequate to address the complexity, scale and sensitivity of witness vulnerability in criminal trials in India. A shift from a discretionary model-based to a statutory framework is essential.

CONCLUSION

This paper has examined the evolution, scope and limitations of witness protection in Indian criminal trials. It has been argued that while the judiciary has played a commendable but present judicial guidelines are insufficient for recognising witness vulnerability and initiating protective measures. The absence of legislative backing has led to a continuous lack of permanence, uniformity and enforceability. The analysis also shows that witness protection is the most important part of criminal trials, as they are the central people on whom the justice process depends. Their vulnerability due to social position, nature of offences and power dynamics involves a legal response that is uniform and systematic in nature. Without protection, witnesses are exposed to intimidation, coercion and retaliation, which results in the hostility of witnesses, delays in the trials and contributes to the declining conviction rates. In this paper, a comparative examination of other countries like the United States, the United Kingdom and

Australia was also analysed which concluded that effective witness protection cannot be sustained through judicial creativity alone and requires a statutory framework. Countries that adopted statutory regimes had a clear institutional responsibility and procedural measures. Accordingly, this paper concludes that India must move beyond judicial guidelines and enact a comprehensive statutory framework. Ultimately, safeguarding witnesses is not a benevolence but a foundational requirement for the functioning of the criminal justice system in India and if protecting witnesses fails, it results in silencing truth, weakening accountability and compromising justice itself.