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Witness Protection Scheme 2018: A Critical Appraisal within India's Criminal Justice System

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ABSTRACT

*Witnesses constitute the backbone of the criminal justice system. Their testimony forms the basis of investigation, prosecution, and adjudication. However, the Indian criminal justice system has historically failed to provide adequate protection to witnesses, resulting in intimidation, coercion, and the alarming rise of hostile witnesses. The Witness Protection Scheme, 2018—approved by the Supreme Court in *Mahender Chawla v. Union of India*—marks India's first national-level attempt to institutionalize witness protection. This paper critically examines the Scheme's objectives, legal foundations, operational mechanisms, and limitations. It evaluates the Scheme in light of constitutional guarantees, statutory provisions, judicial precedents, Law Commission reports, and international best practices. The study concludes that while the Scheme is a progressive step, its implementation remains uneven and requires statutory backing, financial autonomy, and institutional strengthening to ensure meaningful protection of witnesses and the integrity of the criminal justice system.*

KEYWORDS

Witness Protection Scheme 2018, Hostile Witnesses, Criminal Justice System, Fair Trial, Law Commission of India, Judicial Reforms, Witness Security.

1. INTRODUCTION

The criminal justice system of any nation rests fundamentally on the integrity, reliability, and willingness of witnesses to participate in the judicial process. Witnesses serve as the primary source of factual reconstruction in criminal trials, enabling courts to ascertain the truth and deliver justice. Jeremy Bentham's characterization of witnesses as "the eyes and ears of justice" continues to hold profound relevance in contemporary legal discourse [1]. Their testimony forms the backbone of investigation, prosecution, and adjudication, making them indispensable to the administration of justice.

However, the Indian criminal justice system has long struggled with the challenge of protecting witnesses from intimidation, coercion, and retaliatory violence. Witnesses frequently face threats to their life, property, and reputation, particularly in cases involving organized crime, sexual offences, terrorism, and crimes committed by politically influential individuals. The absence of a robust witness protection framework has resulted in a disturbing rise in the number of hostile witnesses, leading to compromised trials and wrongful acquittals. Studies and judicial observations have repeatedly highlighted that witnesses often retract their statements due to fear, pressure, or inducements, thereby undermining the very foundation of the justice system [2].

The problem is exacerbated by systemic deficiencies such as delayed trials, inadequate police protection, lack of anonymity, and the absence of institutional support mechanisms. Witnesses are often required to make repeated court appearances, face harassment during investigation, and endure prolonged uncertainty. These structural weaknesses contribute to a climate of fear and reluctance, discouraging individuals from coming forward to testify. As a result, the criminal justice system suffers from low conviction rates, particularly in serious offences such as rape, murder, and corruption [3].

Recognizing these challenges, various committees and commissions—including the Law Commission of India, the National Police Commission, and the Malimath Committee—have consistently emphasized the need for a comprehensive witness protection mechanism. The Law Commission's 14th Report (1958) was the first to highlight the hardships faced by witnesses, while subsequent reports such as the 154th (1996), 172nd (2000), 178th (2001), and 198th (2006) Reports provided detailed recommendations for witness identity protection, in-camera proceedings, and procedural safeguards [4]. Despite these recommendations, legislative action remained limited for decades.

A significant turning point came with the Supreme Court's judgment in *Mahender Chawla v. Union of India* (2018), where the Court approved the Witness Protection Scheme, 2018 (WPS-2018) and directed its implementation across all States and Union Territories until a suitable legislation is enacted. The Court acknowledged that witness protection is integral to ensuring a fair trial under Article 21 of the Constitution and that the State has a duty to safeguard witnesses from threats and intimidation [5]. The Scheme, prepared in consultation with the National Legal Services Authority (NALSA), represents India's first national-level attempt to institutionalize witness protection.

The Witness Protection Scheme, 2018 introduces a structured mechanism for threat assessment, categorization of witnesses, identity protection, relocation, and financial assistance. It empowers the District Legal Services Authority (DLSA) to act as the competent authority for approving protection measures based on a Threat Analysis Report prepared by the police. The Scheme also mandates confidentiality, prohibits disclosure of witness identity, and provides for in-camera trials and use of audio-video electronic means to prevent direct confrontation between the witness and the accused [6].

Despite its progressive features, the Scheme faces several challenges in implementation. The absence of statutory backing limits its enforceability, and the reliance on police-led threat assessment raises concerns about impartiality. Many states lack adequate financial resources, trained personnel, and institutional infrastructure to operationalize the Scheme effectively. Moreover, awareness among witnesses, police officers, and judicial personnel remains limited, resulting in inconsistent application across jurisdictions [7].

In this context, a critical examination of the Witness Protection Scheme, 2018 becomes essential. This paper seeks to analyze the Scheme within the broader framework of India's criminal justice system, evaluate its strengths and limitations, and explore the constitutional, statutory, and judicial foundations of witness protection. It also draws upon international best practices, including the United States Witness Security Program (WITSEC), European Union directives, and South Africa's Witness Protection Act, to identify potential reforms for strengthening India's witness protection regime.

Ultimately, the effectiveness of the criminal justice system depends not only on the existence of laws but on the confidence of witnesses in the system's ability to protect them. Ensuring their safety is not merely a procedural requirement—it is a constitutional imperative and a prerequisite for upholding the rule

of law. The Witness Protection Scheme, 2018 represents a significant step forward, but its success hinges on robust implementation, statutory reinforcement, and sustained institutional commitment.

2. LITERATURE REVIEW

The need for witness protection has been repeatedly emphasized by various committees and commissions:

2.1 Law Commission Reports

- a. **14th Report (1958)**: First reference to witness protection; highlighted hardships faced by witnesses.
- b. **154th Report (1996)**: Dedicated a chapter to witness protection and facilities.
- c. **172nd Report (2000)**: Recommended protection for victims of sexual assault during testimony.
- d. **178th Report (2001)**: Emphasized protection from accused persons.
- e. **198th Report (2006)**: Proposed a Witness Identity Protection Bill and detailed witness protection programmes.

2.2 National Police Commission (1980)

Acknowledged the difficulties faced by witnesses in attending court proceedings.

2.3 Malimath Committee (2003)

Recommended:

- a. Dignified treatment of witnesses
- b. Separate waiting areas
- c. Immediate payment of allowances
- d. Institutional witness protection mechanisms

2.4 Judicial Observations

Courts have repeatedly highlighted the need for witness protection in cases such as:

- a. *Zahira Sheikh v. State of Gujarat*

b. *Sakshi v. Union of India*

c. *Mahender Chawla v. Union of India*

3. RESEARCH METHODOLOGY

The present study adopts a doctrinal, analytical, and qualitative research methodology, which is most appropriate for examining the legal, constitutional, and institutional dimensions of the Witness Protection Scheme, 2018. Since the subject matter concerns statutory interpretation, judicial reasoning, policy evaluation, and comparative legal analysis, doctrinal research provides the necessary framework for understanding the evolution, scope, and limitations of witness protection in India.

Doctrinal research involves the systematic study of legal principles, statutory provisions, judicial precedents, and authoritative commentaries. It enables the researcher to trace the development of legal norms, identify gaps in the existing framework, and critically analyze the coherence of legal doctrines within the criminal justice system [1]. In the context of witness protection, doctrinal analysis is essential because the Scheme itself is rooted in judicial directions, Law Commission recommendations, and constitutional mandates under Articles 14 and 21.

3.1 Sources of Data

The study relies on both **primary** and **secondary** sources of data.

3.1.1 Primary Sources

Primary sources include:

- **Statutes and procedural laws**, such as the Code of Criminal Procedure, 1973; the Indian Evidence Act, 1872; and constitutional provisions relating to fair trial and personal liberty.
- **Judicial decisions** of the Supreme Court and High Courts, including landmark cases such as *Zahira Sheikh v. State of Gujarat* [2], *Sakshi v. Union of India* [3], and *Mahender Chawla v. Union of India* [4], which have shaped the jurisprudence on witness protection.
- **Law Commission Reports**, particularly the 14th (1958), 154th (1996), 172nd (2000), 178th (2001), and 198th (2006) Reports, which provide foundational insights into the need for witness protection mechanisms.

- **Government documents**, including the Ministry of Home Affairs' Witness Protection Scheme, 2018 and NALSA implementation reports.

These primary materials form the backbone of the study, enabling a rigorous examination of the legal framework governing witness protection in India.

3.1.2 Secondary Sources

Secondary sources include:

- Academic books and commentaries on criminal procedure, evidence law, and victimology
- Peer-reviewed journal articles
- Reports of international bodies such as the United Nations Office on Drugs and Crime (UNODC)
- Newspaper articles and credible online legal resources
- Comparative studies on witness protection programs in the United States, South Africa, and the European Union

These sources help contextualize the Indian framework within global best practices and provide critical perspectives on the strengths and weaknesses of the existing system.

3.2 Nature of Research

The research is qualitative in nature, focusing on interpretative analysis rather than numerical data. Qualitative legal research allows for a deeper understanding of:

- The socio-legal challenges faced by witnesses
- The constitutional implications of witness protection
- The practical difficulties in implementing the Scheme
- The judicial approach to balancing fair trial rights with witness security

This approach is particularly relevant because witness protection is not merely a procedural issue but a matter of human rights, access to justice, and public confidence in the legal system [5].

3.3 Analytical Framework

The study employs a critical analytical framework, which involves:

- Examining the historical evolution of witness protection in India

- Evaluating the adequacy of statutory and constitutional safeguards
- Assessing the operational mechanisms of the Witness Protection Scheme, 2018
- Identifying gaps in implementation across states
- Comparing Indian practices with international models such as the U.S. WITSEC Program and South Africa's Witness Protection Act, 1998

This analytical approach helps highlight inconsistencies, structural deficiencies, and areas requiring reform.

3.4 Comparative Method

A comparative method is used to analyze how other jurisdictions have developed robust witness protection systems. Comparative legal analysis is essential because:

- Witness intimidation is a global challenge
- Countries like the United States have decades of experience with relocation, identity change, and long-term protection
- International best practices can guide reforms in India

This method strengthens the study by situating India's Scheme within a broader global context [6].

3.5 Limitations of the Study

The study acknowledges certain limitations:

- Lack of empirical field data due to the confidential nature of witness protection
- Limited availability of state-wise implementation reports
- Absence of a statutory witness protection law, which restricts the scope of doctrinal analysis to a judicially approved scheme

Despite these limitations, the study provides a comprehensive doctrinal and analytical evaluation of the Witness Protection Scheme, 2018.

3.6 Justification for Methodology

The chosen methodology is justified because:

- Witness protection is primarily a legal and policy issue
- Doctrinal analysis is essential for understanding statutory gaps

- Judicial precedents form the core of witness protection jurisprudence
- Comparative analysis helps identify feasible reforms
- Qualitative research captures the human rights dimension of witness security

Thus, the methodology aligns with the objectives of the study and supports a rigorous academic inquiry.

4. ANALYSIS AND DISCUSSION

4.1 Importance of Witness Protection

Witnesses face:

- a. Threats to life and property
- b. Pressure from influential accused persons
- c. Police harassment
- d. Social stigma
- e. Economic hardship due to repeated court appearances

These factors contribute to the rise of hostile witnesses, undermining the justice system.

4.2 Constitutional Foundations

Article 21 – Right to Life and Personal Liberty

Witness protection is integral to ensuring:

- a. Safety
- b. Dignity
- c. Psychological security

Article 14 – Equality Before Law

Equal access to justice requires that witnesses be protected from intimidation.

Article 39A – Free Legal Aid

Protection mechanisms fall within the broader mandate of ensuring justice for all.

4.3 Statutory Framework

CrPC Provisions

- a. **Section 173(6):** Withholding witness identity in sensitive cases
- b. **Section 327:** In-camera trials
- c. **Section 44:** Protection of persons assisting police

Indian Evidence Act

Although it does not define “witness,” it governs admissibility of oral and documentary evidence.

4.4 Witness Protection Scheme 2018: Key Features

Threat Categorization

- a. **Category A:** Threat to life
- b. **Category B:** Threat to safety, reputation, or property
- c. **Category C:** Moderate threat requiring limited protection

Threat Analysis Report

Prepared by the Head of Police within five days of application.

Protection Measures

- a. Identity protection
- b. Change of identity
- c. Relocation
- d. In-camera trials
- e. Use of audio-video electronic means
- f. Ensuring witness and accused do not meet
- g. Financial assistance

Institutional Mechanism

- a. District Legal Services Authority (DLSA) as the competent authority
- b. Confidentiality of records
- c. Periodic review of protection measures

4.5 Critical Evaluation of the Scheme

Strengths

- a. First national-level witness protection framework
- b. Judicial approval ensures enforceability
- c. Clear procedural guidelines
- d. Emphasis on confidentiality
- e. Multi-tier threat categorization

Weaknesses

- a. Not a statutory law; only a judicially approved scheme
- b. Implementation varies across states
- c. Inadequate funding
- d. Police-led threat assessment may be biased
- e. No independent witness protection agency
- f. Limited long-term rehabilitation measures

5. FINDINGS

- a. Witness intimidation remains a major cause of acquittals.
- b. WPS-2018 is progressive but insufficient without statutory backing.
- c. Lack of awareness among witnesses and police personnel.
- d. Financial and administrative constraints hinder implementation.
- e. Judicial support is strong, but executive execution is weak.

6. SUGGESTIONS

- a. Enact a comprehensive Witness Protection Act.
- b. Establish an independent Witness Protection Authority.
- c. Ensure dedicated budgetary allocation.
- d. Introduce technology-based protection (voice distortion, video conferencing).

- e. Provide psychological counselling and long-term rehabilitation.
- f. Strengthen police accountability and training.
- g. Create a national witness relocation fund.
- h. Conduct awareness programs for witnesses and legal professionals.

7. CONCLUSION

The Witness Protection Scheme, 2018 is a landmark initiative that acknowledges the centrality of witnesses in the criminal justice system. However, its success depends on robust implementation, statutory backing, and institutional reforms. Protecting witnesses is not merely a procedural requirement—it is essential for ensuring fair trial, upholding constitutional values, and restoring public confidence in the justice system.

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