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Witness Protection as a Human Rights Imperative: A Critical Analysis of India's Witness Protection Framework

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Witness Protection as a Human Rights Imperative: A Critical Analysis of India's Witness Protection Framework

ABSTRACT

The efficacy of any criminal justice system depends substantially upon the willingness of witnesses to participate in judicial proceedings without fear of intimidation, coercion, or retaliation. In India, the absence of a comprehensive statutory framework for witness protection for several decades resulted in widespread witness hostility, compromised prosecutions, and diminished public confidence in the administration of justice. Recognizing these concerns, the judiciary and the executive introduced the Witness Protection Scheme, 2018, which was subsequently endorsed by the Supreme Court as enforceable law until appropriate legislation is enacted. While the Scheme represents a significant institutional development, concerns regarding implementation, financial constraints, anonymity safeguards, and inter-state coordination continue to impede its effectiveness. This article examines witness protection through the lens of human rights and constitutional jurisprudence. It argues that witness protection is not merely a procedural necessity but an essential component of the rights to life, dignity, security, and access to justice. The study analyses international human rights standards, comparative practices, and the evolution of witness protection mechanisms in India. It further evaluates the strengths and limitations of the Witness Protection Scheme, 2018 and proposes reforms aimed at developing a robust statutory framework capable of ensuring effective protection for witnesses while simultaneously strengthening the administration of criminal justice.

KEYWORDS

Witness Protection, Human Rights, Access to Justice, Fair Trial, Article 21, Criminal Justice System, Witness Protection Scheme 2018.

1. INTRODUCTION

Witnesses occupy a central position in the criminal justice system. Their testimony often constitutes the foundation upon which judicial determinations of guilt or innocence are based.¹ However, in many

¹ Glanville Williams, *The Proof of Guilt: A Study of the English Criminal Trial* (3rd edn, Stevens & Sons 1963).

criminal proceedings, particularly those involving organized crime, terrorism, political influence, sexual offences, and serious economic offences, witnesses face threats, intimidation, harassment, and physical violence². Such threats not only endanger individual witnesses but also undermine the broader objective of ensuring justice. The problem of witness intimidation has emerged as a significant challenge within the Indian criminal justice system³. Numerous high-profile cases have demonstrated how witnesses frequently retract statements or turn hostile due to fear of retaliation⁴. Consequently, the truth-seeking function of criminal trials is compromised, resulting in acquittals and erosion of public confidence in legal institutions⁵. Traditionally, Indian criminal procedure focused primarily on the rights of the accused, with limited attention devoted to the protection of witnesses⁶. The absence of dedicated legal safeguards exposed witnesses to significant risks and discouraged their participation in criminal proceedings⁷. Recognizing this deficiency, Indian courts repeatedly emphasized the need for witness protection mechanisms capable of safeguarding witnesses and ensuring the integrity of judicial proceedings⁸. The adoption of the Witness Protection Scheme, 2018 marked a significant step towards addressing these concerns⁹. Nevertheless, the Scheme remains an executive instrument rather than a comprehensive legislative enactment¹⁰. Questions continue to arise regarding its practical implementation, institutional capacity, funding mechanisms, and long-term sustainability¹¹. From a human rights perspective, witness protection extends beyond procedural efficiency¹². The protection of witnesses is intrinsically linked to the rights to life, dignity, liberty, security, and access to justice. A legal system that fails to protect witnesses effectively risks violating these fundamental rights and undermining the rule of law itself¹³. This article critically examines witness protection as a human rights imperative. It explores the constitutional foundations of witness protection, evaluates

² United Nations Office on Drugs and Crime, *Good Practices for the Protection of Witnesses in Criminal Proceedings Involving Organized Crime* (2008).

³ Law Commission of India, *Witness Identity Protection and Witness Protection Programmes* (198th Report, 2006).

⁴ *Zahira Habibullah Sheikh v State of Gujarat* (2004) 4 SCC 158.

⁵ *State of Gujarat v Anirudhsing* (1997) 6 SCC 514.

⁶ Ratanlal & Dhirajlal, *The Code of Criminal Procedure* (24th edn, LexisNexis 2022).

⁷ Law Commission of India (n 3).

⁸ *Neelam Katara v Union of India* 2003 SCC OnLine Del 732; *Zahira Habibullah Sheikh v State of Gujarat* (2004) 4 SCC 158.

⁹ Ministry of Home Affairs, Government of India, *Witness Protection Scheme, 2018*.

¹⁰ *Mahender Chawla v Union of India* (2019) 14 SCC 615.

¹¹ Law Commission of India (n 3).

¹² Constitution of India, art 21; Universal Declaration of Human Rights 1948, arts 3 and 8.

¹³ *Maneka Gandhi v Union of India* (1978) 1 SCC 248.

international legal standards, analyses the existing Indian framework, and proposes reforms necessary for the establishment of a comprehensive witness protection regime¹⁴.

Statement of the Problem

The effectiveness of the criminal justice system depends significantly upon the willingness of witnesses to provide truthful testimony before courts. However, witnesses in India frequently encounter threats, intimidation, coercion, social pressure, and even physical harm due to their involvement in criminal proceedings. Such circumstances often result in witnesses turning hostile, withholding information, or refusing to participate in legal processes. Although the Witness Protection Scheme, 2018 represents an important step towards addressing these concerns, questions remain regarding its implementation, accessibility, legal enforceability, institutional capacity, and effectiveness in safeguarding witnesses. The absence of a dedicated statutory framework further complicates the situation and raises concerns about consistency and accountability. The problem is not merely procedural but also constitutional and human rights-oriented. Failure to protect witnesses jeopardizes the rights to life, dignity, personal security, and access to justice. Consequently, there is a pressing need to critically examine whether the existing framework adequately fulfills the State's obligation to protect witnesses and ensure the effective administration of justice.

Research Gap

Existing literature on witness protection in India predominantly focuses on criminal procedure, evidentiary concerns, and the phenomenon of hostile witnesses. While several studies have discussed the Witness Protection Scheme, 2018 and the recommendations of the Law Commission of India, comparatively limited attention has been devoted to analysing witness protection through a comprehensive human rights framework. Furthermore, many studies examine witness protection from the perspective of prosecution efficiency and conviction rates, often overlooking its relationship with constitutional guarantees such as the right to life, personal liberty, dignity, and access to justice. There is also a relative scarcity of research integrating international human rights standards, comparative practices, judicial developments, and contemporary implementation challenges within a single analytical framework. The present study seeks to address this gap by examining witness protection as a human rights imperative and evaluating the Indian framework in light of constitutional principles, international

¹⁴ Andrew Ashworth, *Human Rights, Serious Crime and Criminal Procedure* (Sweet & Maxwell 2002).

obligations, and comparative legal experiences.

2. RESEARCH OBJECTIVES

1. To examine witness protection as an integral component of human rights protection.
2. To analyse the constitutional basis of witness protection in India.
3. To evaluate the effectiveness of the Witness Protection Scheme, 2018.
4. To study international standards and comparative witness protection mechanisms.
5. To propose reforms for strengthening witness protection in India.

3. RESEARCH QUESTIONS

1. Can witness protection be considered a fundamental human rights obligation of the State?
2. To what extent does the Witness Protection Scheme, 2018 adequately protect witnesses?
3. What lessons can India derive from international witness protection models?
4. Is there a need for comprehensive witness protection legislation in India?

Hypothesis

- *Primary Hypothesis*

The existing witness protection framework in India, despite the introduction of the Witness Protection Scheme, 2018, remains insufficient to fully protect witnesses and effectively fulfil the State's constitutional and human rights obligations.

- *Secondary Hypothesis*

The enactment of comprehensive witness protection legislation supported by independent institutions, adequate financial resources, and rehabilitation mechanisms would significantly enhance witness security and strengthen access to justice within the Indian criminal justice system.

4. RESEARCH METHODOLOGY

The study adopts a doctrinal research methodology. It relies upon primary sources including constitutional provisions, judicial decisions, statutory instruments, and the Witness Protection Scheme, 2018. Secondary sources such as journal articles, books, Law Commission Reports, governmental reports, and international human rights instruments have also been consulted. Comparative analysis has been undertaken with reference to selected foreign jurisdictions to identify best practices and reform measures.

5. LITERATURE REVIEW

Witness protection has increasingly attracted scholarly attention due to its direct relationship with fair trial rights, access to justice, and the effective functioning of criminal justice systems. Academic literature consistently recognizes that witnesses serve as essential participants in the adjudicatory process and that their safety is indispensable for the administration of justice. Early scholarship on witness protection primarily focused on procedural concerns relating to witness intimidation and hostile testimony. Scholars observed that fear of retaliation often discourages witnesses from cooperating with investigative agencies, particularly in cases involving organized crime, political influence, and serious offences. The absence of adequate protection mechanisms was identified as a major factor contributing to weakened prosecutions and declining public confidence in criminal justice institutions. The Law Commission of India, in its 198th Report titled *Witness Identity Protection and Witness Protection Programmes*, highlighted the vulnerability of witnesses within the Indian criminal justice system. The Report emphasized that intimidation and coercion frequently prevent witnesses from providing truthful testimony and recommended the establishment of structured protection mechanisms. The Commission argued that witness protection is essential for preserving the integrity of judicial proceedings and ensuring effective access to justice.

Subsequent academic discourse expanded the debate beyond procedural considerations and examined witness protection through the lens of constitutional rights and human rights obligations. Scholars increasingly argued that the State bears a positive duty to protect individuals who face risks because of their participation in legal proceedings. This perspective is rooted in the understanding that the rights to life, liberty, dignity, and security impose affirmative obligations upon governments to prevent foreseeable harm. Several researchers have explored the relationship between witness protection and Article 21 of the Constitution of India. Their analyses suggest that the constitutional

guarantee of life and personal liberty extends beyond protection from arbitrary State action and encompasses a duty to safeguard individuals against threats posed by private actors. Witness protection, therefore, emerges as a natural extension of constitutional guarantees relating to human dignity and personal security. Comparative studies have examined witness protection programs in jurisdictions such as the United States, the United Kingdom, Canada, and Australia.

These studies generally conclude that successful witness protection frameworks are characterized by dedicated legislation, institutional independence, adequate funding, and long-term rehabilitation measures. Scholars have noted that relocation programs, identity protection mechanisms, and psychological support services play a crucial role in ensuring the effectiveness of witness protection initiatives. The emergence of international human rights jurisprudence has further strengthened academic arguments in favour of comprehensive witness protection. International instruments addressing organized crime, corruption, human trafficking, and violence against vulnerable groups increasingly recognize witness safety as an essential component of effective justice delivery. Consequently, witness protection is now viewed not merely as a criminal procedure issue but as an important element of the broader human rights framework.

Despite these developments, existing literature identifies several challenges in the Indian context. Researchers have pointed to inadequate implementation, insufficient financial resources, lack of public awareness, and the absence of a dedicated statutory framework. Concerns have also been raised regarding excessive reliance upon local law enforcement agencies for threat assessment and implementation of protection measures. While previous studies have contributed significantly to understanding witness protection, there remains a need for comprehensive analysis that integrates constitutional principles, international human rights standards, judicial developments, and contemporary policy challenges. The present study seeks to address this gap by examining witness protection as a human rights imperative and evaluating the effectiveness of India's existing framework through a rights-based perspective.

6. JUDICIAL RECOGNITION OF WITNESS PROTECTION IN INDIA

The development of witness protection in India has been shaped largely through judicial intervention. Courts have repeatedly acknowledged that intimidation of witnesses undermines the administration of justice and threatens the rule of law. Judicial pronouncements have therefore played a crucial role in recognizing witness protection as an integral

component of constitutional governance.

6.1 *Zahira Habibullah Sheikh v. State of Gujarat (2004)*

One of the most significant judicial pronouncements concerning witness protection emerged from the Best Bakery case. The case arose from communal violence in Gujarat, where several witnesses retracted their earlier statements during trial proceedings. The Supreme Court expressed serious concern regarding the influence of fear and intimidation upon witness testimony. It observed that witnesses frequently face threats and pressure that prevent them from speaking truthfully before courts. The Court emphasized that a fair trial is not limited to safeguarding the rights of the accused; it also requires protection of witnesses and victims. Justice cannot be effectively administered if witnesses are compelled to remain silent due to fear of retaliation. This decision marked an important shift in Indian jurisprudence by explicitly recognizing witness intimidation as a threat to the administration of justice.

6.2 *Neelam Katara v. Union of India*

The issue of witness protection received further judicial attention in the aftermath of the high-profile Nitish Katara murder case. The Delhi High Court acknowledged the necessity of protecting witnesses who face threats because of their participation in criminal proceedings. The Court observed that witnesses constitute the "eyes and ears of justice" and emphasized that their security is indispensable for maintaining public confidence in judicial institutions. The judgment highlighted the urgent need for a comprehensive witness protection framework and encouraged legislative action in this area.

6.3 *National Human Rights Commission v. State of Gujarat*

In proceedings arising from communal violence cases, concerns regarding witness intimidation once again came before the judiciary. The Court stressed the responsibility of the State to ensure that witnesses are able to participate in legal proceedings without fear. The decision reinforced the principle that witness protection is closely connected with constitutional guarantees relating to fairness, equality, and access to justice.

6.4 *Mahender Chawla v. Union of India (2018)*

The most important judicial development occurred in *Mahender Chawla v. Union of India*. The petition highlighted the absence of a uniform witness protection framework despite repeated judicial

recommendations and Law Commission reports. Recognizing the seriousness of the issue, the Supreme Court approved the Witness Protection Scheme, 2018 and directed its implementation throughout India. The Court held that witness protection is essential for preserving the integrity of criminal proceedings and safeguarding constitutional values. Importantly, it declared the Scheme enforceable under Article 141 of the Constitution until suitable legislation is enacted. The decision represents a landmark moment in the evolution of witness protection jurisprudence in India. It transformed witness protection from a policy recommendation into a legally enforceable framework and reaffirmed the constitutional obligation of the State to protect witnesses.

6.5 *Judicial Contribution to Human Rights-Based Witness Protection*

Collectively, these decisions demonstrate the judiciary's consistent recognition of witness protection as a constitutional necessity. The courts have repeatedly emphasized that intimidation of witnesses affects not only individual safety but also the broader administration of justice. Judicial developments have contributed to the emergence of a rights-based understanding of witness protection grounded in:

- Article 21 (Right to Life and Personal Liberty);
- Access to Justice;
- Fair Trial Principles;
- Rule of Law;
- Protection of Human Dignity.

The judiciary has therefore acted as the principal catalyst for witness protection reform in India, paving the way for the adoption of the Witness Protection Scheme, 2018 and future legislative initiatives.

7. WITNESS PROTECTION AS A HUMAN RIGHTS IMPERATIVE

The discourse surrounding witness protection has increasingly shifted from procedural necessity to human rights obligation. Witnesses who participate in criminal proceedings perform a public function by assisting courts in discovering the truth. Consequently, the State bears a corresponding responsibility to protect them from foreseeable risks arising from such participation. The concept of witness protection is closely connected to several internationally recognized human rights principles. The right to life, personal security, dignity, and access to justice collectively impose positive obligations upon States to create

conditions under which witnesses can testify without fear.

Within the Indian constitutional framework, Article 21 guarantees the right to life and personal liberty. Judicial interpretation has expanded Article 21 beyond mere physical existence to encompass dignity, safety, and security. When witnesses face threats because of their involvement in legal proceedings, the State's obligation to protect life and liberty becomes directly engaged. Furthermore, witness protection contributes to the realization of fair trial guarantees. While fair trial rights are commonly associated with the accused, they also encompass the broader objective of ensuring that judicial proceedings are capable of establishing truth through reliable evidence. Witness intimidation undermines this objective and adversely affects victims, society, and the administration of justice. The human rights perspective therefore recognizes witness protection as a mechanism that simultaneously safeguards individual rights and strengthens institutional justice. In this sense, witness protection operates as an essential pillar of the rule of law and democratic governance.

8. INTERNATIONAL HUMAN RIGHTS FRAMEWORK GOVERNING WITNESS PROTECTION

Witness protection has evolved from a domestic criminal justice concern into an internationally recognized component of human rights protection. Contemporary international instruments acknowledge that effective justice delivery depends upon the ability of witnesses to participate in judicial proceedings without fear of intimidation, harassment, or retaliation. Although no universal treaty is exclusively dedicated to witness protection, several international instruments impose obligations upon States to safeguard individuals who assist in the administration of justice. The right to life and security of person forms the foundation of witness protection obligations. Article 3 of the Universal Declaration of Human Rights proclaims that every individual has the right to life, liberty, and security of person.

Similarly, Article 9 of the International Covenant on Civil and Political Rights recognizes the right to liberty and security. These provisions require States not only to refrain from arbitrary interference but also to adopt positive measures to protect individuals from foreseeable threats posed by non-state actors. Witness protection also derives support from the broader right of access to justice. The ability of victims and witnesses to participate safely in legal proceedings is indispensable for the effective enforcement of legal rights. Fear of retaliation may deter witnesses from providing truthful testimony, thereby impairing judicial processes and undermining public confidence in legal institutions.

Consequently, international human rights law increasingly views witness protection as a prerequisite for meaningful access to justice. A significant development in this regard is reflected in the United Nations Convention against Transnational Organized Crime (UNTOC). Article 24 of the Convention specifically requires State Parties to adopt appropriate measures to provide effective protection to witnesses in criminal proceedings involving organized crime. Such measures include physical protection, relocation, restrictions on disclosure of identity, and evidentiary rules enabling testimony through technological means.

Similarly, the United Nations Convention against Corruption (UNCAC) obligates States to establish effective witness protection mechanisms, particularly in cases involving corruption and abuse of public office. Article 32 of the Convention emphasizes protection from potential retaliation or intimidation for witnesses, experts, and victims. Particular importance is attached to witness protection in cases involving violence against women and children. The Convention on the Rights of the Child requires States to adopt measures that protect child witnesses participating in judicial proceedings. International guidelines further emphasize child-sensitive procedures, confidentiality safeguards, and protection against secondary victimization.

International criminal tribunals have also contributed significantly to the development of witness protection norms. Institutions such as the International Criminal Court have established extensive witness protection units responsible for ensuring security, relocation, psychological support, and confidentiality measures. These mechanisms demonstrate the growing international consensus that witness protection is indispensable for the effective administration of justice. The cumulative effect of these international instruments establishes that witness protection is not merely a procedural convenience but an essential human rights obligation. States are expected to create legal, institutional, and administrative frameworks capable of ensuring the safety, dignity, and participation of witnesses in judicial proceedings.

9. COMPARATIVE ANALYSIS OF WITNESS PROTECTION MECHANISMS

A comparative examination of witness protection frameworks provides valuable insights into the measures necessary for creating an effective and sustainable protection regime. Several jurisdictions have developed comprehensive witness protection programs supported by dedicated legislation, specialized agencies, and substantial institutional resources.

9.1 *United States*

The United States is often regarded as a pioneer in witness protection.

The federal Witness Security Program (WITSEC), administered by the United States Marshals Service, was established in 1970 to combat organized crime and mafia-related activities.

Under the program, eligible witnesses may receive:

- Relocation to undisclosed locations;
- New identities and documentation;
- Financial assistance during transition;
- Employment and housing support;
- Continuous security monitoring.

The effectiveness of WITSEC has been widely acknowledged due to its comprehensive approach and centralized administration. The program demonstrates the importance of institutional autonomy and adequate funding in ensuring witness security.

9.2 *United Kingdom*

Witness protection in the United Kingdom is administered through specialized police units operating under statutory frameworks. Protection measures include risk assessments, identity changes, relocation, and confidentiality safeguards. Particular emphasis is placed upon balancing witness protection with the rights of the accused. Courts frequently employ measures such as:

- Video-link testimony;
- Anonymity orders;
- Closed court proceedings in exceptional circumstances.

The British model illustrates how witness protection can coexist with principles of transparency and fair trial.

9.3 *Australia*

Australia has adopted both federal and state witness protection legislation. The principal objective is to safeguard individuals who face substantial risks because of their cooperation with law enforcement agencies.

Protection measures include:

- Change of identity;
- Relocation assistance;
- Financial support;
- Confidentiality obligations imposed upon public authorities.

Australian legislation also imposes strict penalties for unauthorized disclosure of protected witness information, thereby strengthening confidentiality protections.

9.4 *Lessons for India*

The comparative analysis reveals several common features among successful witness protection systems:

1. Dedicated statutory frameworks.
2. Independent witness protection authorities.
3. Secure funding mechanisms.
4. Long-term relocation programs.
5. Identity protection measures.
6. Psychological counselling and rehabilitation services.
7. Strong confidentiality safeguards.

India's current framework incorporates some of these elements; however, significant gaps remain in implementation, institutional capacity, and legislative backing. The experiences of other jurisdictions suggest that effective witness protection requires more than procedural guidelines; it demands a comprehensive legal and administrative structure supported by sustained governmental commitment.

10. EVOLUTION OF WITNESS PROTECTION IN INDIA

The development of witness protection in India has largely been driven by judicial intervention. For many decades, Indian criminal procedure lacked specific provisions addressing witness security despite recurring concerns regarding intimidation, coercion, and hostility of witnesses. The issue attracted serious attention following several high-profile criminal cases in which witnesses either retracted their statements or refused to testify due to threats and pressure. Such incidents exposed systemic weaknesses within the criminal justice system and highlighted the urgent need for protective measures. The Law Commission of India

played a crucial role in initiating discourse on witness protection. In its 198th Report titled *Witness Identity Protection and Witness Protection Programmes*, the Commission emphasized the necessity of creating a structured mechanism for safeguarding witnesses exposed to danger because of their participation in criminal proceedings. The judiciary consistently recognized the vulnerability of witnesses. In *Zahira Habibullah Sheikh v. State of Gujarat* (Best Bakery Case), the Supreme Court observed that a criminal justice system cannot function effectively when witnesses are subjected to intimidation and fear. The Court underscored the State's responsibility to create conditions enabling witnesses to testify freely and truthfully. Subsequently, in *Mahender Chawla v. Union of India* (2018), the Supreme Court approved the Witness Protection Scheme, 2018 and declared it enforceable throughout India until suitable legislation is enacted by Parliament. This decision marked a watershed moment in the evolution of witness protection jurisprudence. The Witness Protection Scheme, 2018 represented the first nationwide attempt to institutionalize witness security through structured risk assessment mechanisms and protective measures. Although implemented through executive action, the Scheme significantly transformed the legal landscape by formally recognizing witness protection as an essential component of criminal justice administration.

11. CRITICAL ANALYSIS OF THE WITNESS PROTECTION SCHEME, 2018: A HUMAN RIGHTS PERSPECTIVE

The Witness Protection Scheme, 2018 represents the most significant institutional response to the longstanding problem of witness intimidation in India. Approved by the Supreme Court in *Mahender Chawla v. Union of India* and declared enforceable across the country until the enactment of appropriate legislation, the Scheme seeks to provide a structured framework for assessing threats faced by witnesses and implementing suitable protective measures. While the Scheme marks a progressive step towards strengthening criminal justice administration, its effectiveness must be evaluated not merely from a procedural standpoint but also through the lens of human rights protection.

11.1 Salient Features of the Witness Protection Scheme, 2018

The Scheme introduces a systematic mechanism for identifying, assessing, and addressing threats to witnesses. It recognizes that witnesses may face varying degrees of risk and therefore adopts a graded approach to protection. A Witness Protection Application may be filed before the Competent Authority by the witness, family members, legal representatives, or investigating agencies. Upon receiving the application, a Threat Analysis Report is prepared by law enforcement authorities, assessing the nature and severity of the threat.

The Scheme classifies witnesses into three categories:

Category A

This category includes cases where the threat extends to the life of the witness or family members during investigation, trial, or even after the conclusion of proceedings.

Category B

This category covers situations involving threats to the safety, reputation, or property of the witness or family members.

Category C

This category includes cases involving moderate threats, harassment, intimidation, or pressure that may affect the witness's ability to testify freely.

Based upon the risk assessment, the Competent Authority may order protective measures such as:

- Police protection;
- Installation of security devices;
- Temporary relocation;
- Concealment of identity;
- In-camera proceedings;
- Use of video conferencing facilities;
- Restriction on publication of witness information;
- Monitoring of threats and intimidation.

The Scheme further establishes a Witness Protection Fund intended to meet expenses relating to protection measures.

11.2 Constitutional Foundation of Witness Protection

The Scheme derives substantial constitutional legitimacy from Article 21 of the Constitution of India.

The Supreme Court has consistently interpreted Article 21 expansively to include rights essential for living with dignity, security, and freedom from fear. Witnesses who participate in criminal proceedings often

expose themselves to significant risks. Consequently, the State's obligation to protect life and personal liberty extends to safeguarding witnesses against foreseeable threats. Witness protection also intersects with Article 14, which guarantees equality before law. A justice system in which powerful individuals can intimidate witnesses effectively creates unequal access to justice. Protection mechanisms therefore contribute to ensuring substantive equality within the legal process. Further, witness protection reinforces the constitutional commitment to the rule of law. Judicial proceedings can only function effectively when evidence is presented freely and truthfully. Intimidation of witnesses directly undermines this objective and threatens the integrity of the justice system itself. The constitutional justification for witness protection is therefore rooted not only in individual rights but also in the collective interest of preserving public confidence in legal institutions.

11.3 Witness Protection as a Component of the Right to Access Justice

Access to justice is increasingly recognized as an integral human right. Courts and international human rights bodies have emphasized that legal remedies must be practical and effective rather than merely theoretical. Witnesses play a critical role in enabling courts to determine facts and administer justice. However, fear of retaliation often prevents individuals from cooperating with investigative agencies and judicial institutions. In such circumstances, the absence of witness protection effectively denies meaningful access to justice for victims and society as a whole.

The Witness Protection Scheme seeks to address this challenge by reducing the risks associated with participation in criminal proceedings. From a human rights perspective, this objective aligns with broader principles of fairness, accountability, and protection of vulnerable persons. The Scheme thus serves a dual purpose. It protects individual witnesses while simultaneously strengthening the ability of courts to perform their truth-finding function.

11.4 Strengths of the Witness Protection Scheme, 2018

A. Formal Recognition of Witness Rights

Perhaps the most significant achievement of the Scheme is the formal acknowledgment that witnesses require protection as a matter of legal and institutional concern. Historically, witness security remained largely neglected within Indian criminal procedure. The Scheme represents an important shift towards recognizing witnesses as stakeholders in the justice process rather than mere sources of

evidence.

B. Structured Risk Assessment

The introduction of Threat Analysis Reports promotes a more objective and systematic approach to protection decisions. Rather than relying upon ad hoc measures, authorities are required to evaluate the nature and extent of threats before determining appropriate safeguards.

C. Protection of Identity

Confidentiality measures constitute a valuable feature of the Scheme. The concealment of witness identity reduces opportunities for intimidation and retaliation, particularly in cases involving organized crime, sexual offences, terrorism, and corruption.

D. Flexibility of Protective Measures

The Scheme provides a range of protective options tailored to different levels of risk. Such flexibility enables authorities to adopt proportionate responses while minimizing unnecessary restrictions upon judicial proceedings.

E. Judicial Oversight

The involvement of judicial authorities enhances accountability and reduces the likelihood of arbitrary decisions. Judicial supervision also contributes to balancing witness protection with the rights of the accused.

11.5 *Limitations and Challenges*

Despite its progressive features, the Scheme suffers from several structural and practical limitations.

A. Absence of Dedicated Legislation

The most significant weakness lies in the fact that the Scheme is not a parliamentary enactment. It operates primarily through executive directions endorsed by judicial intervention. A comprehensive statute would provide greater legal certainty, stronger enforcement mechanisms, clearer institutional responsibilities, and enhanced accountability. The absence of dedicated legislation may also create inconsistencies in implementation across different states and jurisdictions.

B. Financial Constraints

Effective witness protection requires substantial financial resources. Relocation, security arrangements, technological infrastructure, counselling services, and long-term support mechanisms involve considerable expenditure. Many states continue to face challenges in maintaining adequately funded witness protection programs. Without sustained financial commitment, the objectives of the Scheme may remain difficult to achieve.

C. Overreliance on Local Police

The Scheme relies heavily upon local police authorities for threat assessment and implementation of protection measures. This dependence may create concerns in situations where witnesses fear local influence, political interference, corruption, or collusion with accused persons. The absence of an independent witness protection agency limits institutional credibility.

D. Inadequate Long-Term Rehabilitation Measures

Unlike witness protection programs in certain foreign jurisdictions, the Indian Scheme provides limited emphasis upon long-term rehabilitation. Witnesses who relocate often face challenges relating to employment, education, housing, social integration, and psychological well-being. The absence of comprehensive rehabilitation mechanisms may discourage participation in protection programs.

E. Lack of Specialized Psychological Support

Witnesses subjected to threats frequently experience anxiety, trauma, and emotional distress. While physical security remains essential, psychological support services are equally important. The Scheme provides insufficient attention to counselling and mental health assistance, thereby limiting its holistic effectiveness.

F. Limited Public Awareness

A substantial number of witnesses remain unaware of available protection mechanisms. Low levels of awareness reduce accessibility and prevent eligible individuals from seeking protection. The effectiveness of any protection framework depends not only upon legal provisions but also upon public knowledge and confidence in the system.

11.6 Human Rights Critique of the Existing Framework

From a human rights perspective, the Witness Protection Scheme

represents a commendable but incomplete response to witness vulnerability. The Scheme acknowledges the State's positive obligation to protect individuals participating in judicial proceedings. However, the practical realization of this obligation depends upon implementation capacity, institutional independence, and adequate resource allocation. Human rights jurisprudence increasingly emphasizes that States must take reasonable measures to prevent foreseeable harm. Where authorities are aware of threats faced by witnesses, failure to provide effective protection may amount to a violation of the rights to life, security, dignity, and access to justice. Furthermore, witness protection should not be viewed solely as an instrument for improving conviction rates. Its primary justification lies in protecting individuals who assist the administration of justice and preserving the integrity of democratic institutions governed by the rule of law. Accordingly, the current framework should be regarded as a transitional measure rather than a complete solution. The development of a comprehensive statutory regime remains necessary to fully align India's witness protection framework with constitutional principles and international human rights standards.

12. NEED FOR COMPREHENSIVE WITNESS PROTECTION LEGISLATION IN INDIA

The limitations of the existing Scheme demonstrate the urgent necessity of a dedicated witness protection statute. Such legislation would transform witness protection from an executive initiative into a legally enforceable right supported by robust institutional mechanisms.

A comprehensive statute should establish:

- An independent National Witness Protection Authority;
- Uniform standards applicable throughout India;
- Dedicated funding arrangements;
- Comprehensive relocation programs;
- Psychological and social rehabilitation services;
- Strict confidentiality obligations;
- Criminal penalties for disclosure of protected information;
- Technological safeguards for virtual testimony;
- Special provisions for women, children, and vulnerable witnesses.

The enactment of such legislation would not only strengthen criminal justice administration but also reinforce India's commitment to constitutional governance and human rights protection.

13. RECOMMENDATIONS FOR STRENGTHENING WITNESS PROTECTION IN INDIA

The effectiveness of any witness protection mechanism ultimately depends upon its ability to provide real and practical security rather than merely symbolic safeguards. Although the Witness Protection Scheme, 2018 represents a significant advancement, several reforms are necessary to ensure that witness protection evolves into a comprehensive human rights-oriented framework capable of addressing contemporary challenges within the criminal justice system.

13.1 Enactment of Comprehensive Witness Protection Legislation

The foremost requirement is the enactment of a dedicated witness protection law by Parliament. The existing Scheme derives its authority primarily from judicial endorsement and executive implementation. While this arrangement has provided an interim solution, it lacks the permanence and enforceability associated with statutory legislation.

A comprehensive statute should clearly define:

- Rights of protected witnesses;
- Institutional responsibilities;
- Eligibility criteria;
- Protection procedures;
- Funding mechanisms;
- Accountability standards;
- Penalties for violations.

Legislative recognition would strengthen legal certainty and ensure uniform application across all States and Union Territories.

13.2 Establishment of an Independent Witness Protection Authority

The implementation of witness protection should not remain exclusively dependent upon local law enforcement agencies. Given concerns regarding political influence, corruption, and resource constraints, there is a compelling need for an autonomous witness protection authority

operating at both national and state levels.

Such an authority could be responsible for:

- Conducting independent threat assessments;
- Supervising protection measures;
- Coordinating relocation programs;
- Monitoring compliance;
- Maintaining confidentiality of witness information.

Institutional independence would enhance public confidence and reduce fears of interference by influential individuals.

13.3 Strengthening Financial Infrastructure

One of the major challenges confronting witness protection in India is inadequate financial support. Effective protection frequently requires relocation, identity protection, security arrangements, technological resources, and rehabilitation assistance.

The Witness Protection Fund should therefore be strengthened through:

- Dedicated budgetary allocations;
- Central and State government contributions;
- Court-directed compensation deposits in appropriate cases;
- Asset forfeiture mechanisms in organized crime cases.

Stable funding is indispensable for ensuring continuity and effectiveness.

13.4 Adoption of Advanced Technological Measures

Modern technology can significantly reduce risks faced by witnesses while preserving the integrity of judicial proceedings.

Courts should increasingly utilize:

- Secure video conferencing facilities;
- Voice distortion technology;
- Facial masking systems;
- Encrypted communication channels;

- Digital confidentiality protocols.

The use of technology is particularly relevant in cases involving organized crime, terrorism, trafficking, and sexual offences where direct confrontation may expose witnesses to heightened risks.

13.5 Comprehensive Relocation and Rehabilitation Programs

Physical protection alone may be insufficient in situations involving serious threats. Witnesses who are compelled to relocate often encounter substantial difficulties in rebuilding their lives.

Future reforms should therefore include:

- Housing assistance;
- Employment support;
- Educational opportunities for dependents;
- Financial counselling;
- Social reintegration programs.

International experiences demonstrate that long-term rehabilitation significantly enhances the success of witness protection initiatives.

13.6 Provision of Psychological Support Services

Witnesses frequently experience trauma arising from criminal victimization, threats, intimidation, and participation in lengthy judicial proceedings.

A rights-based witness protection framework should incorporate:

- Professional counselling;
- Trauma-informed assistance;
- Mental health services;
- Crisis intervention mechanisms.

Protecting psychological well-being is as important as ensuring physical security.

13.7 Specialized Protection for Vulnerable Witnesses

Certain categories of witnesses require enhanced protection owing

to their particular vulnerabilities.

Special provisions should be developed for:

- Children;
- Women subjected to gender-based violence;
- Persons with disabilities;
- Victims of trafficking;
- Witnesses in terrorism and organized crime cases.

A differentiated approach would ensure substantive equality and effective protection for vulnerable groups.

13.8 Capacity Building and Training

The success of witness protection programs depends substantially upon the competence and sensitivity of implementing authorities.

Regular training programs should be conducted for:

- Police officers;
- Prosecutors;
- Judicial officers;
- Court staff.

Training should emphasize human rights principles, confidentiality obligations, risk assessment techniques, and victim-sensitive approaches.

13.9 Public Awareness and Accessibility

Witness protection mechanisms can only be effective if potential beneficiaries are aware of their existence.

Government agencies should undertake:

- Awareness campaigns;
- Information dissemination initiatives;
- Community outreach programs;
- Publication of simplified procedural guidelines.

Increased awareness would encourage greater participation in the justice process and reduce reluctance among prospective witnesses.

14. CONCLUSION

The administration of criminal justice depends fundamentally upon the willingness of individuals to come forward and testify without fear. Witnesses serve as indispensable participants in the truth-seeking process, enabling courts to determine facts, enforce accountability, and uphold the rule of law. Yet the history of the Indian criminal justice system reveals that witness intimidation, coercion, and retaliation have frequently undermined these objectives, resulting in hostile testimony, failed prosecutions, and diminished public confidence in legal institutions. This study demonstrates that witness protection must be understood not merely as a procedural requirement but as a human rights imperative. The protection of witnesses is intrinsically connected to the rights to life, personal liberty, dignity, security, and access to justice. Constitutional guarantees under Article 21, together with evolving international human rights standards, impose positive obligations upon the State to safeguard individuals who participate in judicial proceedings.

The Witness Protection Scheme, 2018 represents a significant milestone in India's efforts to address witness vulnerability. Its introduction of structured threat assessments, confidentiality measures, and protective mechanisms reflects growing recognition of the State's responsibility towards witnesses. Nevertheless, the Scheme remains constrained by its non-statutory character, implementation challenges, financial limitations, and lack of institutional independence. A comparative analysis of international practices reveals that effective witness protection requires more than temporary safeguards. It necessitates comprehensive legislation, dedicated institutions, sustainable funding, technological innovation, rehabilitation services, and continuous oversight. The experiences of other jurisdictions illustrate that witness protection must be treated as a long-term investment in the integrity of the justice system rather than a short-term administrative measure.

The future of witness protection in India therefore lies in the enactment of a robust statutory framework capable of transforming protective measures into enforceable rights. Such a framework would not only safeguard witnesses but also strengthen public trust in the legal system, enhance the effectiveness of criminal prosecutions, and reinforce the constitutional commitment to justice. In a constitutional democracy governed by the rule of law, justice cannot flourish where witnesses live in fear. Protecting witnesses is ultimately about protecting truth, preserving human dignity, and ensuring that the promise of justice

remains meaningful for all members of society.

BIBLIOGRAPHY

Books

- Glanville Williams, *The Proof of Guilt: A Study of the English Criminal Trial* (3rd edn, Stevens & Sons 1963).
- Andrew Ashworth, *Human Rights, Serious Crime and Criminal Procedure* (Sweet & Maxwell 2002).
- M Cherif Bassiouni, *International Criminal Law* (Martinus Nijhoff Publishers 2008).
- Vepa P Sarathi, *Law of Evidence* (Eastern Book Company 2018).
- Batuk Lal, *Law of Evidence* (Central Law Agency 2022).

Reports

- Law Commission of India, *198th Report on Witness Identity Protection and Witness Protection Programmes* (2006).
- Law Commission of India, *154th Report on the Code of Criminal Procedure* (1996).
- Malimath Committee Report on Reforms of Criminal Justice System (2003).
- National Human Rights Commission Annual Reports.

Journal Articles

- K I Vibhute, 'Witness Protection and Criminal Justice Administration in India' (2007) 49 *Journal of the Indian Law Institute*.
- R V Kelkar, 'Witnesses in Criminal Trials: Need for Protection' (2008) *Criminal Law Journal*.
- S K Verma, 'Human Rights and Witness Protection in India' (2015) *Indian Bar Review*.
- Aparna Chandra, 'Access to Justice and Constitutional Rights in India' (2017) *National Law School Journal*.

International Instruments

- Universal Declaration of Human Rights, 1948.
- International Covenant on Civil and Political Rights, 1966.
- United Nations Convention against Transnational Organized Crime, 2000.
- United Nations Convention against Corruption, 2003.
- Convention on the Rights of the Child, 1989.

Cases

- *Zahira Habibullah Sheikh v State of Gujarat.*
- *Mahender Chawla v Union of India.*
- *Neelam Katara v Union of India.*
- *National Human Rights Commission v State of Gujarat.*
- *State of Gujarat v Anirudh Singh.*