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PRESERVING TESTIMONY: A COMPREHENSIVE EXAMINATION OF WITNESS PROTECTION IN INDIA

~ *Sargam Bansal*

ABSTRACT

Witnesses are essential to the legal system because they offer first-hand impressions and evidence regarding matter that has the power to greatly affect a trial's verdict. Their testimony contributes to a fair and impartial trial by establishing the facts, confirming other evidence, and making sure that all viewpoints are taken into account. Protection of witnesses is an essential part of any legal system. Witness safety and security have long been a source of worry in India, frequently compromising the fairness of the legal system. This blog explores the present situation of witness protection in India, the difficulties encountered, and the advancements achieved in this crucial field.

INTRODUCTION

Jeremy Bentham has said that “*Witnesses are the eyes and ears of justice.*” In the judicial system, witnesses are crucial since it is via their testimony, the Court make decisions and administer justice. It is necessary for witnesses to feel at ease in order for them to testify in court and assist law enforcement. The Supreme Court's ruling in the *Zahira Habibullah Sheikh case*¹ highlights the crucial role that witnesses play in criminal procedures. Witnesses have always been at risk for various forms of harassment, harm, and threats against their lives and property. However, the issue of witness protection is not addressed by the Indian Judicial Administration. Unexpected acquittals in well-known criminal cases are becoming more common, often attributed to witnesses switching

¹ *Zahira Habibulla H. Shiekh v. State of Gujarat* (2004) 4 SCC 158

sides. Given the considerable risk of coercion and witness tampering, it is evident that strong laws is required to safeguard witnesses.

WHO IS WITNESS?

In common legal parlance, Witnesses are people who witness crimes being committed and who have the capacity to testify in court when asked about them.

According to Black's Law Dictionary , "*Witness is one who sees, knows or vouches for something or one who gives testimony, under oath or affirmation in person or by oral or written deposition*"²."

A witness is defined as a person who is competent enough to comprehend the questions posed by the court under Section 118 of the Indian Evidence Act of 1872. Therefore, unless they are unable to comprehend and respond to the questions that are asked to them, anyone can serve as a witness.

CURRENT SCENARIO IN INDIA

India lacks a comprehensive national legislation specifically dedicated to witness protection. Those who choose to testify in court do so with the intention of supporting the legal system, but in the end, they find themselves in a precarious situation where their own and their family's safety is threatened by the constant onslaught of threats and warnings. Even though these witnesses are essential to the legal system, they frequently lack protection and legal support, and the legal system takes their importance for granted. The witness experiences severe distress and suffering during the trial. This compromises the integrity of the legal process and violates the witnesses' fundamental right to a fair trial, which is protected by Article 21 of the Indian Constitution. Many authorities and Judges has occasionally brought up the issue of witness protection.

However, in the case of *Mahendra Chawla v. Union of India*³, a major turning point was reached when the Indian Supreme Court decided to create the Witness Protection Scheme, 2018 which aimed at enabling a witness to depose fearlessly and truthfully. While the scheme is pending before the Parliament, the Supreme Court has ordered to imply the scheme immediately in all the states

² Black's Law Dictionary,
https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://thelawdictionary.org/witness/&ved=2ahUKewjq-dff_b-GAxUwyDgGHZrNAGwQFnoECD8QAQ&usg=AOvVaw16-FIEIbonWMNmbMzy6-gf, (3 June, 2024; 5:00 pm)

³ Mahendra Chawla v. Union of India 2019 (14) SCC 615

and the scheme would be the law of the land. The court said that the scheme will be considered as law under Article 141/142 of the Constitution of India.

WITNESS PROTECTION SCHEME, 2018

The Indian government's first legislative initiative related to witness protection was the Witness Protection Scheme, which was established in 2018. The objective of this Scheme is to ensure that the investigation, prosecution and trial of criminal offences is not prejudiced because witnesses are intimidated or frightened to give evidence without protection from violence or other criminal recrimination.

1. The Witnesses are divided into 3 categories as per threat perception:-
 - Category A : Where the threat extends to life of witness or his family members, during investigation/trial or thereafter.
 - Category B: Where the threat extends to safety, reputation or property of the witness or his family members, during the investigation/trial or thereafter.
 - Category C: Where the threat is moderate and extends to harassment or intimidation of the witness or his family member's, reputation or property, during the investigation/trial or thereafter.
2. Also the costs spent during the implementation of the Witness Protection Order shall be paid from a fund, known as the Witness Protection Fund.
3. Furthermore, the Scheme makes sure that the witness's and his or her family members' identities are fully protected during the investigation.
4. Additional safety precautions are also listed in the scheme to ensure full Protection of witness:
 - Installation of security devices in the witness's home such as security doors, CCTV, Alarms, fencing etc.
 - Concealment of identity of the witness by referring to him/her with the changed name or alphabet;
 - Emergency contact persons for the witness
 - Close protection, regular patrolling around the witness's house
 - Ensuring that witness and accused do not come face to face during investigation or Trial

- Monitoring of mail and telephone calls of witness⁴

Challenges in implementation of the Witness Protection Scheme, 2018

While the Witness Protection Scheme 2018 is a significant step forward, its efficacy depends on the criminal justice system's overall capacity and efficiency. To put the plan into action, the system must be completely reformed to overcome ingrained prejudices, outdated legal frameworks, and public mistrust of law enforcement. Significant obstacles also need to be cleared in order to provide witness protection, including the financial and logistical challenges. A robust and reliable mechanism is required to guarantee the scheme's success.

CONCLUSION

A just and equitable criminal justice system must include witness protection. The 2018 Witness Protection Scheme in India was a big step forward in recognising the difficulties witnesses encounter while providing them the necessary protection safeguards. However, the plan's effective execution depends on societal awareness, funding, and extensive judicial reforms. India can guarantee fair trials, hold the guilty accountable, and increase public confidence in the legal system by placing a high priority on witness protection.

⁴ Witness Protection Scheme, 2018,

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