

SAFE BUT SEEN? EVALUATING THE PROMISE AND PERILS OF WITNESS PROTECTION IN INDIA AND THE USA

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Abstract

In the due course of justice, witnesses tend to face hardships such as mental agony caused by prolonged judicial proceedings, inadequate allowances with delayed payments and most importantly the lack of security given via provisions to witnesses while they face the costs of life-threatening risks for assisting the judiciary in attaining justice. United States has been the most successful while carrying out witness protection, this paper will discuss the need for India to tweak its witness protection schemes by using the US model as a base. The role of witnesses is to provide evidence from the learnings that they possess in relation to an offence, this information is used from the early stage of investigation to ascertaining a judgment. The formerly known *Indian Evidence Act 1872* now referred to as the *Bhartiya Sakshya Adhinyam 2023*, although provides certain rights to witnesses, has not laid down the privileges and protection that need to be given to witnesses explicitly.

Keywords

Witness Protection scheme, India, USA, Article 21, Indian Constitution, Bhartiya Sakshya Adhinyam, Bharatiya Nagarik Suraksha Sanhita, WITSEC.

Resumo

No devido curso da justiça, as testemunhas tendem a enfrentar dificuldades, tais como agonia mental causada por processos judiciais prolongados, subsídios inadequados com pagamentos atrasados e, mais importante ainda, a falta de segurança por via das provisões às testemunhas enquanto enfrentam os custos dos riscos que ameaçam a sua vida por ajudarem o poder judicial a alcançar a justiça. Os Estados Unidos têm sido os mais bem-sucedidos na implementação da proteção de testemunhas. Este artigo discutirá a necessidade de a Índia ajustar os seus esquemas de proteção de testemunhas, usando o modelo dos EUA como base. O papel das testemunhas é fornecer provas a partir do conhecimento que possuem em relação a um crime. Essas informações são utilizadas desde a fase inicial da investigação até à determinação de um julgamento. A antiga Lei de Provas da Índia de 1872, agora conhecida como *Bhartiya Sakshya Adhinyam 2023*, embora conceda certos direitos às testemunhas, não estabelece explicitamente os privilégios e a proteção que devem ser concedidos às testemunhas.



Palavras-chave

Programa de Proteção a Testemunhas, Índia, EUA, Artigo 21, Constituição Indiana, Bhartiya Sakshya Adhinyam, Bharatiya Nagarik Suraksha Sanhita, WITSEC.

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Addressing the Challenges of Witness Protection in India: A Comparative Study with the United States

"In search of truth, he plays that sacred role of the sun, which eliminates the darkness of ignorance and illuminates the face of justice, encircled by devils of humanity and compassion" (Abhyankar & Abhyankar, 2018).

According to Jeremy Bentham, "*Witnesses are the eyes and ears of justice*". This information they possess is crucial from the stage of investigation to the time a judgement is ascertained. Witness protection has been emphasised in plethora of judgements wherein the need for an environment conducive to a fair trial was demanded, which included the protection of witnesses (*Gurbachan Singh v. State of Bombay, 1952*); statutes such as the *Bhartiya Sakshya Adhiniyam, 2023 (BSA)*, previously known as the *Indian Evidence Act, 1872*, and the *Bharatiya Nagarik Suraksha Sanhita (BNSS)*, previously known as the *Code of Criminal Procedure, 1973 (CrPC)*, have only attempted at defining them indirectly by asserting their roles. For instance, *S.180 BNSS* states that a police officer can examine an individual who is "*acquainted with the facts and circumstances of the case*" whereas *Chapter IX and Chapter X* of the *BSA* provides for the conditions that need to be complied with to check the competency of witnesses and their mode of examination. Even though, the term "witness" has not explicitly been defined in any Indian legislative text, it is a well-known fact that a witness is extremely crucial to a proceeding. This was reiterated in the case of *Sarwan Singh v. State of Punjab, 1957*, wherein *Justice Wadhwa* emphasised the importance of a witness and stated that "*a criminal case is built on the edifice of evidence, evidence that is admissible in law. For that witnesses are required whether it is direct evidence or circumstantial evidence*". Further, recognising the issues faced by witnesses, the court pointed towards the dire need of a witness protection legislation and called upon to discourage obtaining adjournments in cases where witness is present and accused is absent (*State of U.P. v. Shambhu Nath Singh, 2001*). The court suggested that threatening witnesses should be



a ground for the cancellation of bail and maintaining anonymity for rape victims and carved out an exception for terrorism witnesses wherein right of accused was subjected to certain exceptions. The courts, realising the imminent threats faced by witnesses, allowed re-trial due to such apprehension. (Ram Govind Upadhyay v. Sudarshan Singh, 2002; Delhi Domestic Working Women's Forum v. Union of India, 1995; People's Union of Civil Liberties v. Union of India, 2003)

This paper is strictly based on a qualitative methodological framework, derived from existing legislation and secondary research. The authors' research approach is deductive with a combination of interpretivism and critical philosophy. This approach intends to determine the factors acting as limitations for witness protection, the improvements necessary to efficiently protect the rights of witnesses in India, and the effect on future generations. The United States has been the most successful while carrying out witness protection. Hence, the authors seek to examine whether there is a requirement for India to modify their witness protection programmes and use the US model as a foundation.

Thus, with this methodological schema, the paper centres upon the dilemma between the efficacy of witness protection through the existing laws, the need for the formation of stronger legislation to optimally tackle the legal issues arising out of coercion, threat, bribery, and the need to assess the effects of witness protection on the development of children. Additionally, a comparison of India with the US model of witness protection aptly exemplifies this dilemma, wherein they represent two very diverse models of protecting witnesses within their territories. As to the research limitations, firstly there exists a lack of access to confidential government records of the respective nations. Secondly, the inability to conduct quantitative data via interviews and other forms of data collection. Lastly, the absence of enough R&D carried out within India.

Finally, this paper contributes to the existing literature in a twofold manner; first it paves the path for countries to lean towards refining their witness protection laws, which in turn can not only provide a superior method of protection but also encourage witnesses to come forth, to meet the ends of justice. Second, it showcases how the justice system can stand triumphant in the battle against the exploitation and manipulation of witnesses along with the wellbeing of the children of witnesses admitted in the programme.

Witness Protection in India: A Legal Overview

Why Shielding Witnesses Matters: Why Witness Protection Is Crucial for India's Legal System

Protection of witnesses is largely two-pronged: safeguarding against harm to the body or property of a witness or their family, and ensuring anonymity. The current Indian statutes identify the role of witnesses in a trial but do not provide positive rights and protection from the hardships witnesses tend to face during trials like mental agony due to prolonged judicial proceedings, delay in providing adequate allowances, and most importantly the lack of security. Security concerns arise due to threats or bribery, witnesses from lower income groups feel threatened or are coerced to wrongfully testify especially in cases wherein powerful or influential parties are involved. These factors lead to witnesses often turning hostile or wrongfully testifying. *"One of the main reasons for witnesses to turn hostile is that they are not accorded appropriate protection by the*



State. It is a harsh reality, particularly, in those cases where the accused persons/criminals are tried for heinous offences, or where the accused persons are influential persons or in a dominating position that they make attempts to terrorize or intimidate the witnesses because of which these witnesses either avoid coming to courts or refrain from deposing truthfully. This unfortunate situation prevails because of the reason that the State has not undertaken any protective measure to ensure the safety of these witnesses, commonly known as 'witness protection' (Mahender Chawla v. Union of India, 2018; 2019). In the case of *Mahender Chawla*, the bench also recognises the loss of time when witnesses are made to appear years after the incident has occurred as it adversely hampers their ability to recall necessary details at the time of actual crime and they are not suitably remunerated for the loss of time and the expenditure.

Over the years courts have observed the reasons behind witnesses turning hostile which may be monetary, deployment of muscle or political power and other forms of threat and intimidation (Ramesh & Ors. v. State of Haryana, 2017). There have been cases where witness protection has proved to be a moot matter and court proceedings have thereby turned futile, which brought out severe defects in the procedure of the Indian police and judiciary (Manu Sharma v. State (NCT of Delhi), 2010). We have seen situations where witnesses have had to take matters in their own hands as in the case of *Bilkis Bano*, a key witness wrote a letter to the incumbent CJI on account of intimidation and threat to life. The protection was granted and the proceedings were relocated from one city to another to ensure the protection and safety of the witnesses. In India, the standard practice of witness protection is typically granted only upon the witness's request, rather than being provided by the state based on the severity of the case. Furthermore, the level of protection offered is discretionary and not assured, as witnesses are generally required to justify the necessity of such protection.

Unfortunately, this issue will remain until stronger protection is enforced as witnesses would otherwise avoid any grave circumstances against themselves or their families. Understanding the plight of witnesses and the unfortunate fact that ensuring 'total safety' of a witness not to mention the need to protect witnesses from gaining media attention. These difficulties faced by witnesses have been highlighted in the 4th Report of the National Police Commission and the Malimath Committee acknowledges the need for witness protection laws. Courts, however, have developed practices of somewhat relying upon hostile witnesses as well so that the entire proceedings do not go barren. Apex court has held that evidence of a hostile witness is not totally rejected, rather can be scrutinised and the part which is consistent with the case of either side may be accepted (State of U.P. v. Ramesh Prasad Misra, 1996). Additionally, it is stated that if court finds that credit of a witness is not completely shaken, one may after considering the evidence of the witness as whole, with due caution, accept the creditworthy part in line with evidence already on record (K. Anbazhagan v. Supt. of Police, 2004).

Justice *J.M. Panchal* eloquently highlighted, "As a protector of its citizens State has to ensure that during a trial in Court the witness could safely depose truth without any fear of being haunted by those against whom he has deposed." The right to a fair and speedy trial is a salient requirement imbedded in Article 21 of our Constitution. Denial of a fair trial may have adverse effects on the victim, society and the accused. A situation where a witness feels threatened may lead to incorrect testimony and gravely affect the fundamental right to a fair trial.



Due to abovementioned reasons, trials get further prolonged by reluctant witnesses, making it imperative for legislation to introduce specific guidelines for witness examination and protection.

Guiding the Way: Law Commission Reports and the Path Toward Effective Witness Protection

Over the years there have been several attempts through Law Commission reports and reports on the Reformation of Criminal Law Justice, to recognise and develop witness protection. The first initiative was taken during the 14th Law Commission report highlighting the '*inadequate arrangements for witnesses in the Courthouse*' pointing to situations where witnesses were made to wait for long periods due to the lack of infrastructure forcing them to wait under trees or the witness shed which is somewhat a barn. Moreover, witnesses were not compensated for travel, meals, or other expenses. Although the scope of examining the witness' position was limited, the Commission recognised these problems and recommended that they be humanely resolved.

The 14th Law Commission Report acknowledges that witnesses were not treated appropriately, and the 42nd Report advocated an increase in witness protection from threats. The Report proposed to add certain sections in the IPC, which in fact was achieved by introducing S.229A which provides that any individual who threatens or tries to influence the witness while producing evidence before any public authority shall be fined. Furthermore, the 154th Law Commission Report reaffirmed the issue of witness ill-treatment highlighting it as the primary cause for witnesses' unwillingness to appear in court. Furthermore, the struggle of the witness in confronting and testifying against perpetrators who have committed serious crimes was addressed.

The 172nd Law Commission Report worked towards the concealment of a minor's witness identity by preventing them from giving oral evidence. However, the Commission stipulated that in cases involving sexual assault, no witnesses, minor or major, would be obliged to provide oral testimony, but their identity would be concealed to protect them from any threats from the accused. The 178th Report deals with hostile witnesses, noting that in circumstances involving strong and wealthy persons or the mafia, witnesses frequently turn hostile and refrain from testifying to protect themselves and their families. The Commission suggested the insertion of S. 184 BNSS, as per which, in cases involving the imprisonment of more than 10 years, the witness could record their statement in the presence of magistrates. The same was even mentioned in the Criminal Law Bill, 2003. Additionally, they suggested that the police officers should take precautionary measures before the trial commenced, in order to avoid any fabrication. However, the Commission much like the legislation failed to address the issue of physical safety of witnesses. The Justice Malimath Commission, underlined the necessity for a comprehensive witness protection plan in light of the rise in incidences of threats and attacks on witnesses and their family members during criminal trials

Lastly, the 198th Report discusses issues related to '*Witness Anonymity*' and '*Witness Protection*'. It was stated that in instances involving terrorism and sexual offences, victims and witnesses are in a vulnerable position and therefore put in risk; hence, the necessity for a witness protection system comparable to those of other Nations; such as



USA, Germany and China, was urged. They even proposed ways to protect the witness post-trial. This Law Commission study served as the cornerstone for the Witness Protection Scheme 2018.

Setting the Standard: Influential Precedents in Witness Protection

Despite the absence of a particular scheme set up for the protection of witnesses or a specific provision in any of the statutes, Courts have attempted to look after their interests and considered protecting them in a multiplicity of judgements (*Naresh Shridar Mairajkar v. State of Maharashtra*, 1966). The judgements have helped in safeguarding witnesses and highlighted the responsibility of police to take due care of them in case of threat. Failing to recognise the role of media today, there is no attempt to protect witnesses from the fourth pillar of the Indian democracy (*Bimal Kaur Khalsa v. Union of India*, 1988).

The court in *Sakshi v. Union of India*, 2004, expressed the mental trauma that a victim or witness would undergo after he is made to confront an accused. The shock or fear upon confrontation may make them reluctant or unable to give details and derail the judicial process. Hence, the court stated the need for a separate screen; which serves two purposes,; first, avoiding forcing the witness to encounter the accused saves them from experiencing trauma and second, by supplementing the process of ensuring fair justice for the victim and society as a whole. The court also issued guidelines concerning the way evidence must be taken from a child witness and emphasised the protection of a victim who has been prey to sexual abuse.

The importance and need for the Witness Protection scheme are evident from the judicial precedents and mentions in Law reports. However, before the Witness Protection Scheme 2018 came into existence, the first guidelines regarding witness protection were laid down in the Neelam Katara plea. Recognising dire need, the Ministry of Home Affairs prepared the Witness Protection Scheme, 2018 which was endorsed by the apex court in the case of *Mahender Chawla v. UOI*, (2019). The case has been a turning point for witnesses as it strengthened their position in the judicial system by providing the essential right of being protected.

The 2018 Blueprint: India's Attempt to Safeguard Its Witnesses

The main purpose of enabling the Witness Protection Scheme was ensuring a fair trial through witness protection by giving them safety for coming forward to help authorities.

In this scheme, a witness would be provided with different measures depending on their vulnerability and the threat they face. Ordinarily, witnesses would be provided with basic services such as police assistance to protect them from any kind of threat and there are additional safeguards in situations involving heinous crimes or high-end criminals They include a new identity and residence elsewhere. To be precise, in situations such as these, the Police Authority would be required to compile a *Threat Analysis Report*, which analyses the gravity of the crime and the threat to the person's life, protection, and several other elements such as the intent and extent of the accused issuing the threat.



Based on this report, the threat would be analysed and accordingly the witness would be provided any of the aforesaid protection measures.

The witnesses are divided into 3 categories i.e., Category A-C based on threat and accordingly, the protection measures are laid down in Part II (7) (a-o) of the Scheme. Some of the measures include holding in-camera trials, allowing a support person to remain present during the recording of statements and deposition, having separate vulnerable witness courtrooms which have special features like one-way mirrors, live video links, and modifying the audio of the witness's voice to protect their identity, - inter alia. Once the protection is offered, a competent authority will monitor the implementation of the same with the help of monthly/quarterly reports.. Hence, the system aims to enhance protection thereby encouraging them to come forward and testify without fear.

Behind the Curtains: How India's Witness Protection Scheme 2018 Works and Where It Stumbles

The Scheme attempts to draw principles from such programs in other nations and has considered wide-ranging kinds of procedures to protect the witness from. It is a great attempt at ensuring witness' trust in the system. However, introduction does not guarantee execution.

Police officers play a major role in the implementation of the scheme as the witness is expected to reach out to them for protection in situations like assisting witnesses to court, regular patrolling, and camera trials which require the police to invest a lot of their time and resources the reality does not align with the letter of law. India is one of the countries with the highest vacancies in the police department according to a report by UNODC (United Nations Office on Drugs and Crime). Thereby making it clear that the police would be overburdened whilst undertaking these measures. Additionally, there is lack of sensitivity training for police to deal with witnesses. The Apex court acknowledged vulnerable witnesses separately and ordered establishment of Vulnerable Witness Deposition Complexes in all high courts (State of Maharashtra v. Bandu @ Daulat, 2018).

Another reason that can lead to the downfall of this scheme would be the lack of funding. States are supposed to fund this program but States are not mandated to do so, rather it is their prerogative to allocate funds as per the need. Furthermore, because the Threat Analysis Report is made by a police officer, in cases involving powerful and influential persons, an officer's report may be corrupted, resulting in a failure to accomplish the ends of justice. The Scheme also fails to embrace the needs of vulnerable interests, their mental or emotional health and issues such as cyber threats, well-being of children in these programs. It has to be kept in mind that it is still not a legislation, i.e., there are no punishment for not adhering to the Scheme.

United States of America

A revolutionary development of witness protection was the Organized Crime Control Act of 1970 in the States amended by Comprehensive Crime Control Act, 1984. This led to the creation of the federal witness protection programme also known as WITSEC. WITSEC



was formally created to protect witnesses or informants willing to testify against perpetrators of organised crimes. While, witness protection, before was instituted under KKK 1871 to protect witnesses testifying against the Ku Klux Klan along with which the Federal Bureau of Investigation (FBI) occasionally created new identities to protect the witnesses. Today witnesses go into witness protection in various criminal matters like drug trafficking, murder and other organised crime.

The goal of WITSEC is to protect witnesses and their authorized family members whose lives are in danger because of their cooperation with the US government. The programme is managed by three main organizations; first, the United States Marshal service which is responsible for non-incarcerated programme participants, second, the Federal Bureau of Prisons (BOP) which maintains custody of incarcerated witnesses and third, the Department of Justice Office of Enforcement Operations (OEO) which authorizes and admits endangered witnesses into the programme. Based on the threats against a witness and their reliability, the State or federal law enforcement agency submits a request for their protection. A WITSEC application will then be submitted to the OEO detailing the witness' testimony along with the threats and risk. Depending on the situation, the witness can be protected by local law enforcement or be moved to a safer area. The witnesses are interviewed by investigators and psychologists in order to determine the witness' mental health at that point in time. Based on these findings, a report is generated and submitted to the EOE and upon scrutiny, a recommendation is made. The US Attorney General makes the final authority as to whether the witness is to be admitted in WITSEC or not. If approved, the Marshals visit the witness and family members to move them to WITSEC safe house.

This service is offered after the witness has complied with the eligibility criteria mentioned as per 9-21.100 of the Department of Justice Manual. The Witness Protection programme has been quite accessible to witnesses as per which they are offered complete relocation, a new identity along with new legal documentation and basic expenses for their day-to-day functioning. This kind of protection is even provided to their immediate family as per which they are not permitted to disclose their new identity even to their extended family.

Cracks in the Armour: The Shortcomings of the US Witness Protection Programme

While some witnesses have merely participated in programmes to get protection, others are driven to do so to avoid association with previous criminal elements and unlawful behaviour, which has resulted in the formation of a new, "non-criminal" lifestyle. Even though most protected witnesses are convicted criminals, authorities are concerned about the threat to third parties posed by witness protection operations, as well as the threat to communities posed by protected witnesses who may cause harm in new, relocated locations. Additionally, if there are erroneous expectations that crime would end, communities may be jeopardised because witnesses may face lengthy jail sentences, fuelling new cycles of violence. Concerns have also been raised about the trustworthiness of witnesses, who occasionally fabricate evidence or falsely charge other offenders.



Ripple Effects: How Today's Protection Schemes Shape Tomorrow's Justice

Witness protection has resulted in many beneficial improvements; yet, while analysing the impact of acceptance into the witness protection programme, one must consider the individual's family members. This is especially because, many of the witnesses subjected to the programme are parents with children who have not reached the age of majority. The impact on the youth can be analysed through the perspective of the ecological system and in this case children whose parents are admitted into the programme. Despite the recent amendment brought to permit families to join the witness protection program, some parents are unable to join due to employment commitments. Children whose parents are forced to be separated suffer a significant psychological impact due to the imbalance in their environment. Apart from their personal lives being disrupted, social factors that promote the healthy development of a child's interpersonal abilities may also suffer; children who have missed school time are victims of the system. Hence, the services need to support and ensure the preservation of the family and social environments for their betterment and social well-being.

Bronfenbrenner's ecological systems theory can be employed to analyse this research due to its emphasis on the relevance of the environmental system on a child's development. The environment, whether at the microsystem, mesosystem, ecosystem, macrosystem, or chronosystem level, can be beneficial or harmful to a child's growth (McKay). It is vital to emphasise that the witness protection programme, directly and indirectly, marginalises children via isolation, social dislocation, movement limitations, and a lack of interaction with family and social networks. Children, therefore, suffer due to separation from their families and placed in foreign situations without any social networks.

At the microsystem level, children are separated from their familiar surroundings, including family and friends, and are expected to adjust to a foreign setting. The mesosystem gets problematic after students enter the programme because they are placed in a new educational setting with a different academic curriculum, new teachers, and a different teaching system.

The ecosystem has an influence when parents abandon their employment in exchange for their children's protection, and children are indirectly harmed since parents are no longer able to give in the same way they were before being enrolled in the programme. The ecological perspective was not only useful in the interpretation of the research results but also provides a framework for the development of relevant and responsive psychosocial interventions by social workers in addressing the needs and challenges experienced by children whose parents are admitted to the programme.

Five key aspects must be taken into consideration, the first is the children's incapacity to adjust to the programme; the second is the children's loneliness; the third is the behavioural manifestations; the fourth is the fact that family contact is essential to assist children to deal with separation, and lastly social work intervention is required to help children cope.

Concerns have been raised about children's behavioural troubles due to of their acceptance into the programme such as refusing to go to school, mood swings, and



instigating conflicts with a parent or sibling regularly. It was also seen that some of the children's academic performance had declined since they were accepted into the programme.

On one hand, Children, unlike adults, struggle to express their emotions and adjust to unexpected settings, resulting in emotional outbursts. Moving causes relocation stress syndrome, symptoms include feelings of insecurity, lack of trust, loneliness, anxiety, and attachment issues. Children of witnesses frequently feel ignored, having no one to connect with at home. On the other hand, parents are overburdened with activities such as adjusting to their new surroundings and preparing to testify in court, earning an income in new environments. Parents feel increased anxiety and stress, and as a consequence, they pay less attention to their children's feelings, resulting in child-parent conflict. A lack of social interaction and official family contact may lead witnesses to violate the terms of the protection agreement by starting dangerous communications with their families.

Children would benefit from social work therapies that help them deal with the challenges of separation and social dislocation, live in the absence of parents, and better adjust to the concealed environment.

Psychosocial assistance is required to assist children with social, emotional, intellectual, and adaptation challenges, as well as homesickness, and to help them develop to their full potential. Counselling, access to healthcare, developing parental skills, and the formation of social support and networks are examples of such interventions.

Next Steps: Strengthening India's Witness Protection for a Safer Tomorrow

There are numerous practical issues when it comes to providing security or relocation in developing nations, such as implementation costs and infrastructure. However, a more pressing issue that is found across nations is revolving around corruption that occurs in both, the administration and judiciary. Hence, admitting that witness protection is a State duty is the first step towards enacting a witness protection Statute. Another solution is for witness statements to be recorded by a judicial magistrate; however, this becomes practically impossible due to the number of courts and understaffed judiciary. Additionally, expert witnesses from various forensic disciplines are not protected in India presently. Witnesses who are content with their employment and family are unlikely to make major adjustments in their lives merely to testify in court, which is an evident barrier to witness protection programmes in many jurisdictions. For a variety of reasons, proper implementation of witness protection programmes will be challenging in countries such as India, where cultural and societal commitments must be met.

To make matters worse, witnesses are subjected to death threats, coercion, harassment, and other forms of abuse and as a result they tend to become hostile in such situations. To avoid this, the Indian government's intervention is critical. The administration's Witness Protection Scheme 2018, as well as the establishment of separate vulnerable witness deposition centres, are significant and effective steps. However, aside from the Delhi High Court guidelines, there is no other legal mention of vulnerable witnesses' protection. The Scheme of 2018, was the first step in the right direction to bring witness



protection under the purview of the law and place the burden of implementation on the State.

Although the scheme provides significant relief to witnesses regarding their safety during the trial and, in exceptional cases, even after the trial is completed, it does have some flaws, such as the fact that the criminal justice system is the responsibility of the state, and some states may lack adequate resources to implement this scheme effectively. An alternative solution could be assistance from the centre; however, the scheme remains silent on the centre having the authority to contribute financially to the Witness Protection Fund. Additionally, the operation of the Witness Protection Order has been limited to three months; and the district head of police has been tasked with deciding the contents and creating the Threat Analysis Report; as a result, in high-profile cases involving politicians or powerful persons, the involvement of the district head creates opportunities for corruption. The Programme is costly and administratively challenging. New difficulties for the programme include the possible disclosure of witnesses online. Modern technology has made it easier to track a person's whereabouts, and social networking sites could be a detrimental source of personal information.

As a result, unanimous and separate legal provisions for protecting the rights of vulnerable witnesses, including strict penalties for those who manipulate the witness, are urgently needed.

Depending on the type of witness and the degree of cooperation, protection may be provided before, during, and/or after the judicial proceeding. Effective witness protection legislation should ideally involve all three relevant agencies i.e. the government, the judiciary and the police who must demonstrate the political will to enact necessary legislation, investigate legal issues, and execute it respectively.

An independent witness protection cell should be established, with the responsibility for providing false identities, relocation, and follow-up. Additionally, throughout the criminal justice process, witnesses should be treated fairly, with respect, and dignity, and should be free of intimidation, harassment, or abuse. They must have access to status of the proceedings guaranteed Right to a speedy trial, and also a prompt and final resolution of the case following conviction and sentence, deadlines to promote speed in criminal proceedings has been introduced in the BNSS (Bharatiya Nagarik Suraksha Sanhita 2023). The police force should be given the authority to take basic witness protection measures such as surveillance, accompanying witnesses to work and court, assisting with emergency relocation, and so on. The courts should take steps to limit public access to the witness's identity, such as having a witness testify under a pseudonym. Alternative solutions may include conducting a live online cross-examination of the witness outside of court, during the trial before the judge, or having a witness testify at a location, out of court, designated by the trial judge with the presence of the trial judge's clerk as well as the opposing party's attorney.

Videoconferencing, teleconferencing, voice and face distortion, and other similar techniques should be encouraged, as should the ability for witnesses to conceal their address or occupation. The best form of witness protection is restoring public trust in the legal system. Witnesses should be assured that those who wish to testify have the police and an impartial system on their side.



It may also be noticed that youngsters who are left at home with grandparents or extended relatives have difficulty adjusting to life without their parents. Witnesses are also frustrated by the prospect of their children growing up without parental direction, which has led to some witnesses fleeing the programme to be reunited with their children. The disadvantage of leaving the programme is that witnesses must confront the perpetrators of the crime on their own, without protection. Witnesses may also experience increased worry as they sought to make sense of their lives in new and unfamiliar places without social support.

The programme should explore encouraging witnesses to be allowed into the programme alongside their families, particularly children, to avoid feelings of isolation and to guarantee family preservation. This might be achieved by increasing awareness of the programme and how it functions in communities so that witnesses who attend the programme are aware of what to expect. Programme's social workers might deliver awareness programmes in partnership with social workers from the department of social development and the police services.

Social workers should consider devising and delivering child-friendly intervention programmes geared at meeting the needs of children accepted to the programme alongside their parents. Such programmes should inter-alia, assist children in adjusting to the programme and at school, as well as connect them to leisure activities in the neighbourhood where their family is safe. This will allow the youngsters to make new acquaintances and at the same time prevent boredom and loneliness.

Ensuring frequent family contact between witnesses and their children will lessen the possibility of witnesses departing the programme to reconcile with the family. Children who are left at home should also receive psychological therapy to help them manage and better comprehend why their parents are absent. As part of family preservation, social workers might provide several services.

Between Fear and Justice: Overcoming the Challenges of Witness Protection in India

There is currently a long way to go for the developing nations to achieve a faultless witness protection programme, however, the recent initiatives taken by India are a step in the right direction. The obvious drawbacks are the lack of funding for effective witness protection as that of the United States paired with the risk of being seen as a social pariah as a result of leaving their family and social circles to begin a new life. This fear inevitably could dishearten a potential witness from testifying. Additionally, as seen in the United States many large-scale criminals have taken refuge in the witness protection programme only to later continue a life of crime. The advantage of a mob member attaining a clean slate in exchange for useful information seems to be a gamble which may lead to an increase in crime rates due to the mobsters taking advantage of the system. This is a struggle faced in the United States and will most definitely cause damaging effects within developing nations, such as India, which have large populations and an understaffed justice system. To allocate enough financing or find alternatives, the Indian government must also prioritize the costs connected with witness protection. Low-cost techniques must be evaluated. This will provide witness protection and much-needed



value in practice. Additionally, India must encourage witnesses by adopting and maintaining witness anonymity and freeing the witness from all forms of intimidation.

Admission of parents into the programme disrupts family functioning, strains emotional relationships, and has a detrimental influence on children's lives in general. However, it is hoped that the availability of knowledge and understanding of how children experience the admission of their parents into witness protection programmes, as presented in this study, will enable social workers to devise interventions that will assist children in coping with the trauma associated with their parents' admission into the programme and, ultimately, restore, reunify, and preserve families.

This article aims to contribute to future research by enticing academicians and lawmakers to assess the current barriers to witness testimony by enhancing the witness protection programme by taking into account social and cultural factors and incorporating affordable programmes that will give potential witnesses the security and safety required to uphold the ends of justice. There is a need for a fair and impartial criminal investigation and therefore witness protection is the first step forward.

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