

Victim and witness protection laws in India: A legal and social analysis

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Abstract

Victim and witness protection laws play a crucial role in ensuring the safety, dignity, and rights of individuals involved in criminal justice processes. In India, the need for robust victim and witness protection mechanisms has become increasingly evident, particularly in the context of rising threats to their safety and the complexities of the criminal justice system. This paper provides a comprehensive legal and social analysis of victim and witness protection laws in India, examining their evolution, implementation challenges, and the interplay between legal provisions and societal factors. The study explores key legislative frameworks, such as the Criminal Law (Amendment) Act, 2013, and recent developments in judicial interpretations. Additionally, it investigates the gaps in existing laws and policies, alongside the impact of social stigmas, institutional inefficiencies, and public awareness on the effectiveness of these protections. The paper also discusses comparative insights from international legal systems, suggesting potential reforms for a more comprehensive protection mechanism in India. Through this analysis, the paper aims to contribute to a deeper understanding of the intersection between law and social dynamics in victim and witness protection.

Keywords: Victim protection, witness protection, criminal justice, legal reforms, INDIA, social impact, criminal law (amendment) act, judicial system, legal protections, social stigma

Introduction

Victim and witness protection are a critical aspect of the criminal justice system. In India, where crime and violence are prevalent, it is essential to ensure that victims and witnesses are safeguarded from retribution, harassment, and intimidation. The significance of victim and witness protection cannot be overstated as it directly impacts the administration of justice, encouraging victims to report crimes and witnesses to testify, thus facilitating the prosecution of offenders.

The paper aims to explore the legal framework surrounding victim and witness protection in India, assess the challenges in its implementation, and provide recommendations for reform to strengthen the system. The protection of victims and witnesses is fundamental to ensuring fair trials and upholding the rule of law.

Historical Context and Evolution

International Context

The protection of victims and witnesses has a long history in international law. The United Nations Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power (1985) underscores the need for countries to provide support to victims, including witness protection programs. Similarly, the UN Convention against Transnational Organized Crime (2000) recognized the importance of protecting those who assist in criminal investigations, particularly in organized crime cases.

Indian Context

In India, victim and witness protection has been a complex issue, and the legal framework surrounding it has evolved over time. Early laws did not comprehensively address the issue of witness intimidation or victim safety. However, over the years, through judicial interventions and legislative

amendments, there has been a gradual shift toward creating protective mechanisms for victims and witnesses.

Key Milestones

- In *State of Maharashtra v. Madhukar Narayan Mardikar (1991)* ^[8], the Supreme Court stressed the importance of the protection of witnesses in the context of ensuring fair trials.
- The *D.K. Basu v. State of West Bengal (1997)* ^[7] case, which laid down guidelines for the treatment of detainees, is significant in the discourse on the protection of individuals involved in criminal proceedings.

The Legal Framework in India

Constitutional Provisions

India's Constitution provides several provisions that indirectly contribute to victim and witness protection. Article 21, guaranteeing the right to life and personal liberty, forms the foundation for the protection of victims and witnesses, as it encompasses their safety and dignity.

Victim Rights Under BharatiyaNagarik Sursksha Sanhitha, 2023 ^[2, 3]

- A victim is permitted under section 18(8) of BNSS (section 24(8) of (Cr.P.C) to engage an advocate of his/her choice to assist the prosecution. However, the Advocate's power is limited, and he may only present written arguments after the evidence has been recorded unless the court grants permission.
- A Victim at the stage of filing the First Information Report as undersection 173 of BNSS (Section 154 of Cr.P.C) is entitled to get the copy of the information as recorded to be given forthwith, free of cost.
- In cases of offences under section 64 to 71 and 74 to 79 and 124 of Bharatiya Nyaya Sanhitha, 2023 ^[2, 3] the

victim's statement has to be recorded by a woman police officer.

- In case the victim is mentally or physically disabled temporarily or permanently, such information has to be recorded at the residence of victim or at a convenient place of victim's choice and in the presence of a interpreter or special educator.
- As under section 173 of BNSS, the victim can also give the information by electronic communication and it shall be taken on record by the officer in charge of a police station on being signed by the informant within three days of giving it.
- If the officer in charge refuses to record such information given by the victim, the same can be sent to the Superintendent of police concerned and in case if the information is still not recorded, the victim can make an application to the Magistrate.
- In case the officer in charge of a police station chooses to file a final report closing a case, a notice has to be issued to the victim/informant informing about the closure.
- As under section 339 of BNSS (section 302 of Cr.P.C) the court can permit an advocate on behalf of the victim to conduct the prosecution.

Victim Rights Under Bharatiya Sakshya Adhiniyam, 2023 ^[2, 3]

- Under Section 154 and 155 of BSA (Section 151 and 152 of Indian Evidence Act), the Court has the power to forbid questions which it regards as indecent or scandalous and intended to insult or annoy to be put to victims and other witnesses.

Bharatiya Nyaya Sanhita 2023 ^[2, 3]

Several sections of the Bharatiya Nyaya Sanhita address the protection of witnesses:

- **Section 231:** Punishes false evidence, protecting the integrity of witness testimony.
- **Section 73:** Prohibits the publication of the identity of rape victims, a critical provision for the protection of privacy and dignity.

Victim Compensation Scheme (2008)

Crime affects a large number of victims who suffer physical, social, financial emotional injury or harm which needs to be promptly redressed by providing them easy access to justice. Though, the victims of crime have generally found support and assistance from their family, tribe or community, they have, by and large, remained "forgotten person" in the criminal justice administration system. It is only in recent decades that the impact of the victimization on crime affected persons drew attention of criminal law jurisdictions around the world and they were convinced that the victims needed to be treated with compassion and their dignity and fundamental rights must be protected and preserved.

Victimology- Definition & Meaning: Broadly speaking victimology may be defined as the scientific study of victimisation, including the relationships between victims and offenders, the interactions between victims and the criminal justice system; that is, the police and courts, and correctional officials. It also includes connections between

victims and other social groups and institutions, such as the media, businesses and social movements. However, the term victimology is not restricted to the study of crime-victims alone but it may extend to other forms of human rights violations that are not necessarily crimes. The term 'victim' in general parlance refers to all those who experience injury, loss or hardship due to any cause and one of such causes may be 2 crime. Therefore, victimology may be defined as a study of people who experience injury or hardship due to any cause. Such injury or harm may be physical, psychological, emotional or financial. It therefore, follows that 'victim of crime' is the person who has suffered at the hands of perpetrator of crime.

Victimology has now emerged as a branch of criminology dealing exclusively with the victims of crime who need to be treated with compassion and rendered compensation and assistance under the criminal justice system. While criminology is concerned mainly with the causation of crime, victimology is primarily concerned with the study as to why people fall a victim to crime and how they can be helped and assisted against abuse of power or criminal acts of offenders through access criminal justice system.

The Victim Compensation Scheme (2008), introduced by the Ministry of Home Affairs, provides financial compensation to victims of violent crimes. This scheme was further strengthened by the Criminal Law (Amendment) Act, 2013, which enhanced compensation for victims of sexual violence and other serious crimes.

The central victim compensation fund- 2016 The central victim compensation fund guidelines- 2016 came into force from 06/07/2016 with the objective to support and supplement the existing victim compensation schemes notified by the states/UT administrations. The guidelines aim at reducing the disparity in quantum of compensation amount notified by different States and union territories and also encouraging the States and union territories to effectively implement the compensation schemes notified by them under section 357 A of Cr.P.C (BNSS Section 396) and to continue financial support to the victims of various crimes especially sexual offences including rape, acid attacks common crimes against children and human trafficking etcetera. The sanctioned size of central victim compensation fund is 200 crores. The CVCF is administered by an empowered committee chaired by the Additional Secretary (CS), MHA. The quantum of compensation is provided in the Annexure to the guidelines and the States and Union territories must notify the victim compensation scheme which should not be less than the amount mentioned in the annexure as per the guidelines. The States and Union territories shall get onetime grant from CVCF and the amount so received shall be utilized by the States/Union territories for disbursement under their respective victim compensation schemes.

Witness Protection Scheme, 2018 ^[6]

The Witness Protection Scheme, 2018 ^[6] is an initiative launched by the Government of India to ensure the safety and security of witnesses who are at risk of harm or intimidation due to their involvement in criminal cases. It aims to provide a safe environment for witnesses, encouraging them to testify without fear of retaliation.

1. Purpose

- The scheme is designed to protect witnesses and whistleblowers who are in danger because of their testimony in criminal cases. This is especially relevant in high-profile cases, organized crime, corruption, terrorism, and other serious offenses.

2. Protection Measures

- **Identity Protection:** Witnesses may be given a new identity to shield them from retaliation.
- **Relocation:** In some cases, witnesses may be relocated to a new place where they can live without fear.
- **Physical Protection:** Security personnel may be provided to witnesses or their families, depending on the threat level.
- **Legal Protection:** Measures are put in place to ensure that the witness is not harmed during the judicial process.

3. Eligibility

- The scheme is applicable to witnesses involved in cases related to terrorism, organized crime, corruption, and serious criminal offenses.
- It also extends to those who are in danger due to their role as whistleblowers or as persons providing critical information.

4. Witness Protection Fund

- The government has set up a Witness Protection Fund to financially support the scheme's implementation, including the costs of witness protection, legal proceedings, and relocation if needed.

5. Implementation

- The scheme is implemented at the state level, but the central government provides guidelines and funding support.
- The decision regarding the protection of a witness is made by a Witness Protection Committee at the state level, which evaluates the threat and the need for protection.

6. Non-Disclosure of Identity

- The identity of witnesses under the scheme is kept confidential, and any attempt to disclose such information is treated as a serious offense.

7. Legal Framework

- The scheme was introduced through the Ministry of Home Affairs, and it provides guidelines to ensure consistent implementation across all states and union territories.

The Witness Protection Scheme, 2018 is an important step towards improving the criminal justice system by ensuring that witnesses feel safe and secure in coming forward to testify, thereby helping in the prosecution of offenders and improving overall law enforcement.

Challenges in Victim and Witness Protection

1. Lack of Comprehensive Legal Framework

- **Absence of a Specific Law:** India does not have a comprehensive victim and witness protection law,

although there have been some initiatives and guidelines in place (like the Witness Protection Scheme, 2018). However, these schemes are not fully enforced or uniformly implemented.

- **Weak Enforcement of Existing Laws:** Even though laws for the protection of victims and witnesses exist, their implementation is often inadequate due to bureaucratic delays, lack of training among officials, and poor follow-up.

2. Fear of Retaliation

- **Revenge Attacks:** Victims and witnesses are often subjected to threats, harassment, or physical harm after providing testimony or assistance in a case. In high-profile cases, the fear of retaliation is particularly strong, which may discourage people from cooperating with law enforcement or the judiciary.
- **Fear of Social Ostracism:** In certain communities or cases (such as sexual assault or caste-based discrimination), victims and witnesses face the risk of being socially ostracized or stigmatized, which deters many from coming forward.

3. Weak Witness Protection Mechanisms

- **Limited Resources:** India lacks adequate infrastructure for witness protection, including safe houses, armed escorts, and other protective measures, especially in rural and remote areas.
- **Overburdened Law Enforcement:** Law enforcement agencies are often overburdened with a large volume of cases, and victim and witness protection is not always a top priority. There is a shortage of specialized personnel and resources to safeguard victims and witnesses adequately.

4. Reluctance to Testify

- **Cultural and Social Barriers:** In India, witnesses and victims from marginalized communities (such as Dalits, tribal people, and women) often face intimidation and discrimination. There is also a general reluctance to testify due to fear of retaliation and social pressure.
- **Long and Traumatic Legal Process:** The lengthy court trials and often traumatic cross-examinations discourage witnesses and victims from participating. This delay in justice, coupled with the psychological burden of going through the legal process, further discourages individuals from coming forward.

5. Lack of Awareness

- **Limited Knowledge of Protection Schemes:** Many victims and witnesses are unaware of the protection mechanisms available to them. Law enforcement and the judicial system also lack effective communication with the public regarding available protection programs.
- **Poor Legal Counsel:** Victims often don't have access to adequate legal counsel or guidance, which affects their confidence in the justice system and their willingness to participate in trials.

6. Political and Police Corruption

- **Political Influence:** In some cases, local politicians and influential individuals can interfere with witness protection efforts, particularly in cases involving powerful figures. This may lead to the intimidation of victims or witnesses.
- **Police Corruption and Complicity:** In some instances, law enforcement officers may not prioritize witness protection, and there have been cases where witnesses are discouraged from testifying or are even compromised due to corruption or pressure from powerful criminal elements.

7. Inadequate Psychological Support

- **Mental Health Support:** Victims and witnesses, especially in sensitive cases (e.g., sexual assault or human trafficking), need psychological and emotional support. However, there is a shortage of mental health services to assist victims in dealing with trauma and stress during the investigation and trial stages.

8. Inconsistent Implementation Across States

- **State-Specific Variations:** The implementation of witness and victim protection schemes varies widely across different states in India. While some states may have implemented certain protective measures, others may lack the necessary infrastructure, coordination, and resources.
- **Urban vs Rural Divide:** Urban areas may have relatively better access to victim and witness protection programs, whereas rural areas, where such crimes are often more rampant, suffer from inadequate protection mechanisms.

9. Witness Tampering and Corruption

- **Manipulation of Evidence and Testimonies:** In some cases, witnesses may be bribed or coerced into changing their testimonies, undermining the integrity of the judicial process. The lack of sufficient protection can leave witnesses vulnerable to such tampering.

10. Judicial Delays

- **Prolonged Trials:** The slow pace of trials in India, which can last years, means that witnesses and victims are exposed to prolonged risks of intimidation and retaliation. The delays also lead to victims and witnesses losing faith in the judicial process.

Solutions to Address the Challenges

- **Enactment of a Comprehensive Witness Protection Law:** India needs a robust, enforceable legal framework specifically dedicated to the protection of victims and witnesses.
- **Resource Allocation and Training:** Adequate resources should be allocated for the protection of witnesses, with training for law enforcement to handle such sensitive cases.
- **Awareness Campaigns:** Public awareness programs to educate victims and witnesses about their rights and available protection measures are crucial.

- **Use of Technology:** Modern technologies such as virtual testimony can be used to reduce the risks to witnesses while ensuring the integrity of their statements.
- **Timely Legal Process:** Judicial reforms to expedite trials and reduce the time between the filing of cases and the delivery of justice would help alleviate some of the fear and uncertainty faced by victims and witnesses.

Case Law and Precedents

State of Maharashtra v. Madhukar Narayan Mardikar (1991)

In this case, the Supreme Court acknowledged the need for witness protection, highlighting that a witness's life and safety must be ensured if the justice system is to function effectively.

D.K. Basu v. State of West Bengal (1997) ^[7]

This case laid down guidelines for the humane treatment of individuals in police custody and recognized the potential dangers faced by victims and witnesses in custodial situations. It brought attention to the need for safeguards in the treatment of vulnerable individuals involved in criminal proceedings.

Ravindra Kaur v. Union of India (2011) ^[9]

This case addressed victim compensation and highlighted the need for a system that goes beyond financial assistance, focusing also on emotional and psychological support for victims.

International Standards and Comparative Analysis

United Nations Guidelines

The United Nations Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power (1985) provides a global framework for victim protection, urging states to implement measures for the compensation and protection of victims. India's adoption of these principles has been slow but is gaining ground with legislative reforms like the Witness Protection Scheme, 2018.

Comparison with Other Jurisdictions

- **United States:** The U.S. has a well-established Witness Protection Program, which offers relocation, new identities, and financial support to witnesses at risk of harm. This program serves as a model for India's own witness protection initiatives.
- **United Kingdom:** The National Witness Protection Scheme in the UK offers a comprehensive set of protections, including the use of video links for testimonies and relocation options. The UK's model could provide useful insights for India, particularly in expanding the scope of witness protection.

Recommendations for Reform

Expansion of the Witness Protection Scheme

The Witness Protection Scheme, 2018 needs further expansion to include more comprehensive provisions, such as greater financial support, better infrastructure, and inclusion of technology-based safeguards like encrypted communication.

Increased Public Awareness and Training

There should be a concerted effort to raise awareness among the public, law enforcement, and the judiciary about the rights of victims and witnesses. Training police personnel and judges on these rights will help ensure better implementation.

Creation of Special Victim-Witness Protection Units

Specialized units within the police and judiciary should be created to handle victim and witness protection. These units would be responsible for ensuring the safety of witnesses and providing psychological support to victims.

Use of Technology

Technology can play a crucial role in victim and witness protection. Video conferencing for testimonies, digital platforms for reporting harassment, and encryption technology for witness communications could significantly enhance witness safety.

Conclusion

In conclusion, the victim and witness protection laws in India, while essential to ensuring justice and fairness in the legal process, still face significant challenges in terms of implementation, awareness, and adequacy. While the legal framework has evolved over time to safeguard vulnerable individuals, the lack of consistent enforcement and the slow pace of legislative reforms often undermine their effectiveness. Socio-economic factors, such as fear of retaliation, societal stigmas, and inadequate infrastructure, further complicate the protection process.

It is imperative that the Indian government strengthens its commitment to victim and witness protection by enhancing institutional mechanisms, providing adequate financial and logistical support, and creating public awareness. Moreover, fostering a supportive environment where victims and witnesses feel secure and confident in coming forward to testify is critical for the overall health of the justice system. To achieve these goals, a more integrated approach that includes collaboration between law enforcement agencies, legal professionals, and civil society is required.

Only through these comprehensive efforts can India create a more just and resilient system that ensures the safety and dignity of victims and witnesses, enabling them to play their crucial role in the pursuit of justice without fear or intimidation.

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