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## **Witness Protection and Fair Trial under Article 21 in India: Reconciling a Constitutional Conflict**

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### **ABSTRACT**

*The administration of criminal justice in India is fundamentally grounded in the guarantee of a fair trial under Article 21 of the Constitution, which ensures procedural fairness and protection of the rights of the accused. However, the effectiveness of a fair trial is closely linked to the ability of witnesses to depose truthfully without fear. In recent years, increasing instances of witness intimidation and hostility have posed serious challenges to the justice delivery system, leading to acquittals and miscarriage of justice. In response, witness protection has emerged as a crucial component of a fair and effective trial process, culminating in the recognition of the Witness Protection Scheme, 2018 by the Supreme Court in *Mahender Chawla v. Union of India*.*

*This paper examines the conceptual and legal foundations of fair trial and witness protection and analyzes the evolving judicial approach in India, particularly through landmark decisions such as *Zahira**



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*Habibullah Sheikh v. State of Gujarat. It highlights the inherent constitutional conflict arising from certain protective measures—such as anonymity, in-camera proceedings and restrictions on cross-examination—which may impact the procedural rights of the accused. Adopting a doctrinal and analytical methodology, the study critically evaluates the challenges in implementation, including the absence of a comprehensive statutory framework and administrative constraints. The paper argues for a balanced and proportionate approach that reconciles competing interests, ensuring that witness protection measures strengthen rather than undermine the fairness and integrity of the criminal trial process.*

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## **Introduction:**

The administration of criminal justice in India is fundamentally anchored in the guarantee of a fair trial, which has been judicially recognized as an essential facet of Article 21 of the Constitution of India. A fair trial ensures procedural fairness, protection of the rights of the accused and adherence to the principles of natural justice. However, the effective realization of this ideal is closely dependent on the willingness and ability of witnesses to depose truthfully before the court. In recent years, the Indian criminal justice system has witnessed a growing concern regarding witness intimidation, hostility and retraction of statements, which has significantly weakened the prosecution's case in several instances and led to miscarriage of justice.

In this context, witness protection has emerged as a critical component of a fair and effective trial process. The safety and security of witnesses are indispensable for ensuring that justice is not defeated by fear, coercion, or external influence. Recognizing this necessity, the judiciary has played a proactive role in developing the framework of witness protection, culminating in the formulation of the Witness Protection Scheme, 2018. At the same time, the courts have consistently emphasized that the right to a fair trial must be preserved, particularly the rights of the accused to cross-examine witnesses, access evidence and be tried in a transparent manner.

This dual emphasis gives rise to a complex constitutional question: how to reconcile the need for protecting witnesses with the equally important requirement of ensuring a fair trial. Certain protective measures—such as anonymity of witnesses, in-camera proceedings and restrictions on cross-

examination—while necessary for safeguarding witnesses, may potentially affect the procedural rights of the accused. This creates a constitutional conflict within the ambit of Article 21, where two essential facets of justice appear to be in tension with each other.

Against this backdrop, the present paper seeks to examine the conceptual foundations of fair trial and witness protection, analyze the existing legal and judicial framework in India and critically evaluate the nature of the conflict between these two principles. It further explores the challenges in implementation and argues for a balanced and harmonized approach that can reconcile the competing interests without compromising the core values of justice. The study adopts a doctrinal and analytical methodology, relying on constitutional provisions, statutory laws and judicial precedents to assess the evolving contours of this important area of criminal jurisprudence.

### **Conceptual Aspect:**

The concept of a fair trial forms the backbone of the criminal justice system in India and is an essential component of the right to life and personal liberty guaranteed under Article 21 of the Constitution of India. Over time, judicial interpretation has expanded Article 21 to include the right to a fair, just and reasonable procedure, making a fair trial an indispensable constitutional guarantee. A fair trial ensures that an accused person is given a reasonable opportunity to defend himself, is presumed innocent until proven guilty and is tried by an impartial and competent court. It also includes important procedural safeguards such as the right to legal representation, the right to cross-examine prosecution witnesses, the right to an open and public trial and protection against arbitrary procedures. The principles of natural justice, particularly *audi alteram partem* (the right to be heard), are deeply embedded in the idea of a fair trial. At the same time, the fairness of a trial is not limited only to the rights of the accused but extends to victims and witnesses as well, ensuring that justice is not only done but is seen to be done.

Witness protection, on the other hand, has emerged as a crucial aspect of ensuring the effective functioning of the criminal justice system. Witnesses play a vital role in the administration of justice, as their testimony often forms the foundation of criminal adjudication. However, in India, witnesses frequently face threats, intimidation, coercion and even physical harm, which leads to a high incidence of hostile witnesses and ultimately undermines the delivery of justice. The need for witness protection arises from this vulnerability and aims to create an environment where witnesses can testify freely, truthfully and without fear. Witness protection encompasses a range of measures, including physical security,



relocation and change of identity, in-camera proceedings and the use of technology such as video conferencing to conceal the identity of witnesses when necessary.

In India, the recognition of witness protection as a legal necessity gained momentum with judicial interventions, culminating in the introduction of the Witness Protection Scheme, 2018, which provides a structured mechanism for safeguarding witnesses based on threat perception. The scheme categorizes witnesses according to the level of threat and prescribes appropriate protection measures accordingly. Despite this development, witness protection in India still largely operates through executive guidelines rather than a comprehensive statutory framework. The challenge lies in balancing witness protection measures with the rights of the accused, particularly the right to a fair trial, as certain protective measures—such as anonymity or restricted cross-examination—may potentially impact the transparency and fairness of the trial process. Therefore, while witness protection is essential for ensuring truthful testimony and effective prosecution, it must be carefully designed and implemented so as not to dilute the fundamental principles of a fair trial.

### **Legal Framework in India:**

The legal framework governing witness protection in India is a combination of judicial directives, statutory provisions and executive measures, with the **Witness Protection Scheme, 2018** forming its core. This scheme was formally recognized and approved by the Supreme Court in *Mahender Chawla v. Union of India* (2018), thereby giving it the force of law under Article 141 of the Constitution until a comprehensive legislation is enacted. The scheme aims to ensure that witnesses can depose freely and truthfully without fear or intimidation. It provides for the preparation of a **Witness Protection Order** based on a threat assessment report and classifies witnesses into three categories—Category ‘A’, ‘B’ and ‘C’—depending on the gravity of the threat to their life, safety, or reputation. The measures under the scheme include police protection, in-camera trials, and use of video conferencing, identity protection, and relocation and in extreme cases, change of identity. It also establishes institutional mechanisms such as the **District Witness Protection Committee**, headed by the District Judge, to decide on protection measures and provides for the creation of a Witness Protection Fund to support such initiatives.

In addition to the scheme, certain provisions under the Code of Criminal Procedure, 1973 (Cr.P.C.) and the Indian Evidence Act, 1872 indirectly contribute to witness protection. Under the Cr.P.C., Section 327 empowers courts to conduct **in-camera proceedings** in certain cases, particularly those involving sexual offences, to protect the identity and dignity of witnesses. Section 273 allows for the recording of

evidence in the presence of the accused, but courts have interpreted this provision flexibly to permit alternatives such as video conferencing in appropriate cases to ensure witness safety. Section 309 mandates expeditious trial proceedings, which indirectly helps reduce the vulnerability of witnesses by minimizing delays. Further, Section 195A of the Indian Penal Code (read with procedural provisions) criminalizes threats or inducement to give false evidence, thereby acting as a deterrent against witness intimidation.

The Indian Evidence Act also contains provisions that support witness protection. Sections 118 and 134 emphasize the competency and sufficiency of witnesses, highlighting their central role in trials. More importantly, Section 151 and Section 152 empower courts to forbid indecent, scandalous, or unnecessarily offensive questions during cross-examination, thereby protecting witnesses from harassment. Section 146, while allowing cross-examination to test the credibility of witnesses, is subject to judicial control to prevent abuse. In cases involving sexual offences, amendments have further restricted questioning about the character of the victim, thereby strengthening witness dignity and protection.

The role of the judiciary has been pivotal in developing and strengthening witness protection in India. Courts have consistently recognized that the absence of adequate protection leads to hostile witnesses and miscarriage of justice. Landmark cases such as *Zahira Habibullah Sheikh v. State of Gujarat* (Best Bakery case) highlighted the consequences of witness intimidation and emphasized the duty of the state to ensure a fair trial environment. The Supreme Court has also issued various guidelines to protect witnesses and has expanded the scope of Article 21 to include the right of witnesses to testify without fear.

The government, both at the central and state levels, is responsible for implementing witness protection measures. This includes establishing protection committees, allocating funds and ensuring coordination between law enforcement agencies. However, the absence of a comprehensive statutory law and inconsistencies in implementation remain significant challenges. Thus, while India has made important strides through the Witness Protection Scheme, 2018 and supporting legal provisions, there is still a pressing need for a robust and uniform legislative framework to ensure effective and consistent witness protection across the country.

### **Judicial Approach in India:**

The Indian judiciary has played a decisive role in shaping the law on witness protection and reinforcing the right to a fair trial under Article 21 of the Constitution. In the absence of a comprehensive statutory framework for a long time, courts have stepped in to fill the legislative vacuum by recognizing



the vulnerability of witnesses and the centrality of their testimony to the administration of criminal justice. Through a series of landmark judgments, the judiciary has emphasized that a fair trial is not confined only to the rights of the accused but also includes the protection and dignity of witnesses, thereby broadening the scope of Article 21.

A significant milestone in this regard is the decision in **Mahender Chawla v. Union of India**, where the Supreme Court formally approved the Witness Protection Scheme, 2018 and declared it to be enforceable across the country until a suitable law is enacted by the legislature. The Court recognized that witnesses are the “eyes and ears of justice” and that their protection is essential for ensuring a fair and effective trial. It further held that safeguarding witnesses is an integral part of the right to life and personal liberty under Article 21, thereby giving constitutional backing to witness protection measures.

Earlier, in the landmark case of **Zahira Habibullah Sheikh v. State of Gujarat**, popularly known as the Best Bakery case, the Supreme Court highlighted the serious problem of witness intimidation and hostility in India. The Court observed that when witnesses are threatened or coerced, the entire justice delivery system is undermined. It ordered a retrial outside the State and stressed that a fair trial includes not only the rights of the accused but also the interests of victims and witnesses. The judgment underscored that the failure to protect witnesses leads to a miscarriage of justice and erodes public confidence in the legal system.

In **State of Punjab v. Gurmit Singh**, the Supreme Court upheld the validity of in-camera proceedings, particularly in cases involving sexual offences, to protect the dignity and privacy of victims and witnesses. The Court recognized that certain procedural modifications, such as holding trials in camera, do not violate the right to a fair trial but rather strengthen it by enabling witnesses to depose without fear or embarrassment. This case illustrates the judiciary’s attempt to strike a balance between transparency in judicial proceedings and the need to protect vulnerable participants.

Through these and several other decisions, the judiciary has progressively expanded the scope of Article 21 to include not only the procedural rights of the accused but also the protection of witnesses and victims. The courts have interpreted the concept of a fair trial in a holistic manner, emphasizing that justice must be fair to all stakeholders involved. At the same time, they have acknowledged the potential tension between witness protection measures—such as anonymity, relocation and restricted disclosure—and the accused’s right to effective cross-examination and open trial. Consequently, the judicial approach in India has been one of careful balancing, seeking to reconcile these competing interests without compromising the core principles of justice.

Overall, the expansion of Article 21 through judicial interpretation has transformed it into a dynamic and inclusive provision that accommodates evolving needs of the criminal justice system. The recognition of witness protection as a constitutional imperative marks a significant step towards ensuring that trials are not only fair in theory but also effective and credible in practice.

### **Conflict between Witness Protection and Fair Trial:**

The relationship between witness protection and the right to a fair trial under Article 21 of the Constitution of India is marked by an inherent tension. While witness protection seeks to ensure that individuals can testify freely without fear, the right to a fair trial guarantees the accused a full and effective opportunity to defend himself. Both are essential components of a just criminal process, yet certain protective measures may inadvertently restrict the procedural safeguards available to the accused. This creates a constitutional conflict where the pursuit of one objective may risk undermining the other.

One of the primary areas of conflict arises from the use of anonymity measures. Protecting the identity of witnesses—by concealing names, addresses, or other identifying details—is often necessary in cases involving serious offences such as organized crime or terrorism. However, anonymity can directly affect the accused's ability to challenge the credibility of the witness. Effective cross-examination, which is a cornerstone of a fair trial, depends on access to sufficient information about the witness, including their background and possible biases. When such information is withheld, the defence may be placed at a disadvantage, raising concerns about the fairness and transparency of the proceedings.

Similarly, in-camera trials, though justified in sensitive cases, also present a potential challenge to the principle of open justice. The idea of a public trial ensures accountability, transparency and public confidence in the judicial process. Conducting proceedings behind closed doors may limit public scrutiny and give rise to apprehensions regarding procedural fairness. While courts have upheld in-camera trials as a necessary exception to protect witnesses and victims, especially in cases involving sexual offences, their frequent or unregulated use may dilute the foundational principle that justice must not only be done but must also be seen to be done.

Another important issue is the restriction on the manner and scope of cross-examination. Protective measures may include shielding witnesses from direct confrontation, allowing testimony through video conferencing, or limiting aggressive questioning. Although these measures are designed to reduce intimidation and psychological stress, they can restrict the defence's ability to test the veracity,





consistency and reliability of the witness's testimony. Since cross-examination is considered one of the most effective tools for discovering truth, any limitation on it must be carefully justified and proportionate.

From a critical perspective, the conflict between witness protection and fair trial rights reflects a broader challenge of balancing competing constitutional values. On one hand, without adequate protection, witnesses may turn hostile or refuse to testify, leading to acquittals and failure of justice. On the other hand, excessive or poorly regulated protection measures may compromise the rights of the accused, potentially resulting in wrongful convictions. The absence of a comprehensive statutory framework further aggravates this issue, as reliance on executive schemes and judicial discretion may lead to inconsistency in application.

Therefore, the conflict is not absolute but contextual. The solution lies in adopting a balanced and proportionate approach where witness protection measures are implemented without substantially impairing the core elements of a fair trial. Courts must ensure that any restriction on the rights of the accused is reasonable, necessary and accompanied by adequate safeguards. In this way, the criminal justice system can strive to harmonize the dual objectives of protecting witnesses and preserving the integrity of the trial process.

### **Challenges and Need for Reform:**

Despite growing judicial recognition and the introduction of the Witness Protection Scheme, 2018, the practical implementation of witness protection in India continues to face serious challenges. One of the foremost issues is the gap between legal provisions and ground realities. While the scheme provides a structured framework for assessing threat perception and granting protection, its execution largely depends on local authorities such as police and district administration, who are often overburdened and lack specialized training. As a result, many witnesses remain unaware of their rights under the scheme and even when protection is granted, it is not always implemented effectively or consistently across different states.

A major concern is the absence of a comprehensive and binding statutory law on witness protection. The current framework operates primarily through an executive scheme approved by the judiciary, which, although enforceable, does not carry the same authority or clarity as a legislation enacted by Parliament. This leads to uncertainties in application, lack of uniform standards and limited accountability mechanisms. Without a clear legal mandate defining the scope, rights, duties and penalties





for non-compliance, the protection of witnesses remains vulnerable to administrative discretion and procedural inconsistencies.

Administrative constraints further complicate the situation. Effective witness protection requires coordination among multiple agencies, including police, prosecution and judiciary. However, institutional weaknesses such as lack of coordination, delays in decision-making and absence of dedicated witness protection units hinder timely and adequate protection. Additionally, there is often inadequate infrastructure to support measures like relocation, identity change, or secure housing, which are essential in high-risk cases. The lack of trained personnel to handle sensitive witness-related issues also affects the quality and reliability of protection provided.

Financial limitations are another significant obstacle. Witness protection measures—such as relocation, security arrangements and technological support—require substantial funding. In many states, there is either insufficient allocation of funds or delays in disbursement, which undermines the effectiveness of the scheme. Although provisions exist for the creation of a Witness Protection Fund, its operationalization remains uneven and financial support is not always readily accessible when needed. This financial inadequacy directly impacts the willingness of authorities to grant comprehensive protection in deserving cases.

These challenges highlight the urgent need for reform in the witness protection framework in India. There is a strong case for enacting a dedicated and comprehensive legislation that clearly defines the rights of witnesses, establishes institutional mechanisms and ensures accountability for implementation. Reforms should also focus on strengthening administrative capacity by creating specialized units, improving inter-agency coordination and providing regular training to officials. Adequate and timely financial support must be ensured through proper budgeting and transparent fund management. Without addressing these structural and practical issues, the objective of ensuring both witness protection and a fair trial will remain difficult to achieve in practice.

## **Conclusion:**

The analysis undertaken in this paper demonstrates that both witness protection and the right to a fair trial are indispensable components of the criminal justice system in India, each deriving its legitimacy from the broad ambit of Article 21 of the Constitution. While a fair trial safeguards the rights of the accused and ensures procedural integrity, witness protection seeks to secure the participation of witnesses without fear, thereby strengthening the truth-finding function of the trial. Rather than being mutually



exclusive, these two principles are inherently interdependent and essential for the effective administration of justice.

However, the study also reveals that in practice, certain witness protection measures—such as anonymity, in-camera proceedings and limitations on cross-examination—can create tensions with the procedural safeguards guaranteed to the accused. This constitutional conflict is not absolute but arises in specific contexts where the protection of one interest may appear to encroach upon the other. The judiciary, through progressive interpretation, has attempted to strike a balance by expanding the scope of Article 21 and recognizing the rights of witnesses alongside those of the accused. Yet, the absence of a comprehensive statutory framework and inconsistencies in implementation continue to pose significant challenges.

The need of the hour is to move beyond ad hoc and fragmented approaches towards a more structured and balanced legal regime. Enacting a comprehensive witness protection law, strengthening institutional mechanisms, ensuring adequate financial support and adopting technological solutions can significantly enhance the effectiveness of witness protection without undermining fair trial rights. At the same time, courts must continue to apply a proportionality-based approach, ensuring that any restriction on the rights of the accused is reasonable, necessary and accompanied by adequate safeguards.

In conclusion, the reconciliation of witness protection and fair trial is not only a constitutional necessity but also a practical imperative for maintaining the credibility of the criminal justice system. A balanced and nuanced approach, rooted in constitutional values and guided by judicial prudence, can ensure that justice is both fair and fearless, thereby upholding the rule of law in its true spirit.

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