



## Accountability and oversight in the implementation of witness protection schemes in India

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### Abstract

Witness intimidation severely undermines fair trials in high-profile Indian criminal cases. The adversarial system requires unbiased, reliable witnesses to ensure justice, but threats and harassment frequently lead to hostile witnesses, weakening the judicial process. “Article 21 of the Indian Constitution” protects the right to testify, but witnesses often lack protection and face threats. Despite Law Commission reports urging a comprehensive witness protection program, existing laws are inadequate and past legislative attempts in 2015 and 2020 bills have failed. The problem of witness intimidation in India necessitates comprehensive solutions. To tackle this, the Supreme Court introduced a “Witness Protection Scheme in 2018” in the case of “Mahender Chawla v. UOI”. However, this scheme, while a step forward, requires deeper analysis to understand its effectiveness and limitations. This paper delves into the root causes of witness hostility in the Indian context, exploring the various factors that contribute to reluctance or fear among witnesses to come forward and testify truthfully. A crucial part of this analysis will be a critical evaluation of the “Witness Protection Scheme, 2018”. This paper examines its strengths and weaknesses, considering its practical implementation and impact on witness safety and cooperation with judicial processes. Ultimately, the paper argues for a more legally sound framework to protect witnesses. The Current situation underscores the urgent need for comprehensive legislation to effectively participate in the judicial system, thereby ensuring justice is served. Such legislation must address the systemic issues that contribute to witness intimidation and create a more secure environment for those who are crucial to the pursuit of justice.

**Keywords:** Witness, justice, scheme, protection, judicial system, safety

### Introduction

“Witnesses are the eyes and ears of justice.”-Jeremy Bentham the efficacy of the criminal justice system is fundamentally dependent on the protection of witnesses. Witness protection constitutes the cornerstone of investigations, prosecutions, and the pursuit of fair trials. The absence of willing witnesses severely compromises the ability to resolve and prosecute criminal cases. Consequently, the integrity and reliability of the justice system are inextricably linked to the protection afforded to witnesses. In recognition of the inherent vulnerability of witnesses to intimidation and potential violence, the Supreme Court of India implemented a landmark decision in 2018, approving the nation’s first comprehensive scheme. “Section 398 of BNSS,” says that all the state governments will prepare and notify a “witness protection scheme” for the state to protect the witnesses.

The meticulously developed scheme, the product of extensive collaboration, signifies a substantial advancement in safeguarding the rights and safety of witnesses. The Union government spearheaded the drafting processes, incorporating vital contributions from diverse stakeholders. “States and Union Territories” offered regional-specific perspectives and practical experiences, ensuring the scheme’s broad applicability and relevance. “National Legal Services” authorities provided crucial expertise in legal frameworks and witness support mechanisms. Civil society organizations contributed valuable insights into the lived experiences of witnesses and the challenges they encountered. High Courts, leveraging their profound understanding of judicial processes, provided essential feedback, while police personnel offered practical insights into witness protection strategies and security protocols. The

overarching objective is to foster a fair trial environment where witnesses feel secure in providing protection, thereby strengthening and enhancing the overall justice system.

India has a well-established witness protection program that continues to develop over time. Its importance has been highlighted in numerous court rulings and reports. In the case of the “State of Gujarat v. Anirudh Singh”, the Supreme Court confirmed that witnesses have a civic duty to assist in criminal investigations, emphasizing the necessity of protective measures to encourage their participation. The program seeks to reduce the risks faced by witnesses, thereby enhancing their willingness, thereby enhancing their willingness to cooperate with the legal system. This witness protection program began with a 1958 recommendation. Later reports, “154th, 178th, and 198th Law Commission Reports”, reinforced the need for a formal system to protect witnesses, leading to the current Scheme. To improve the justice system and inspire public trust, witness protection is crucial. The “Malimath Committee and Law Commission Reports” highlighted this, recommending court intervention against witness harassment and a robust witness protection program. This program reflects these recommendations and judicial decisions. There are some laws like “Bharatiya Nyaya Sanhita, 2023 <sup>[1]</sup>, the Juvenile Justice Act, 2015, the POSCO Act, 2012 and the Whistle Blowers Protection Act 2011” which provide protection for witnesses. This scheme’s inadequate implementation has raised concern from the Supreme Court, which also pointed out areas where the scheme witnesses are crucial to maintaining the integrity of the legal system the court emphasized the urgent need for strong protection for them. When witnesses perceive threats to their safety or property in cases involving powerful individuals, they frequently

become hostile. the Supreme Court defined a fair trial and stressed that the trial would not be fair if witnesses were intimidated or forced to give false testimony in “Zahir Sheikh and Ors. v. State of Gujarat”. Witness protection from intimidation or coercion must, therefore, be guaranteed. The “Nirmal Premkumar and Anr. V. State Rep. by Inspector of Police” serves as a reminder of how vital strong witness protection procedures are to the efficient administration of justice. In criminal trials, witnesses are essential sources of evidence that help the court reach a just verdict. Unfortunately, witnesses are frequently deterred from providing truthful testimony out of fear of intimidation, harassment and retaliation, which can result in an injustice. The possibility of witnesses becoming hostile in response to coercion or threats was a major concern in this case, highlighting the vulnerability of parties to legal proceedings who are not provided with sufficient protection. Enforcing comprehensive witness protection schemes is imperative for the legal system because hostile witnesses erode the prosecution’s case and give perpetrators more confidence. To stop tampering and give witnesses the confidence to testify fearlessly, these programs must guarantee their safety comprehensive and well-being. The ruling highlights the necessity of legislative and judicial initiatives to establish a setting in which witnesses can carry out their responsibilities honestly and without undue influence, enhancing the administration of justice. In 1999, a tragic event unfolded at a restaurant when “Jessica Lal”, a young woman, was fatally shot. The accused was “Manu Sharma”, the son of a prominent former political party leader. Three witnesses initially provided testimony that directly implicated the accused, stating they had seen him shoot Jessica after she refused to serve him alcohol. These initial statements to the police were crucial pieces of evidence in the case. However, a shocking turn of events followed. These three initial witnesses, along with twenty-nine others who had also given statements to the police, significantly altered their testimonies during the trial. They recanted their previous accounts, contradicting significant doubt in the prosecution’s case. This dramatic reversal of their testimony ultimately led to “Manu Sharma’s” acquittal. The implications of this were profound, raising serious questions about the integrity of the judicial process. The “Delhi High Court”, deeply concerned by this coordinated change in testimonies, took Suo moto cognizance of the witness’s demonstrably hostile behaviour. This unusual action showed the court’s recognition of the serious implications of the witness's actions. In 2013, the high court, recognizing the potential for perjury, initiated a separate trial against these witnesses for their contradictory statements. The court’s decision to pursue this case highlighted the importance of upholding the integrity of the justice system. After a thorough examination of the evidence presented, the court ultimately acquitted seventeen of these witnesses from the charge of perjury. The horrific event in which a witness to the “Naroda-Patiya atrocity” was fatally stabbed serves as a reminder of the enormous difficulties in guaranteeing the security of people who are prepared to provide testimony in a delicate and well-known case. The “Gujarat riots, in 2002”, which were characterized by widespread violence and intercommunication tensions, were among the worst periods in Indian history when this atrocity took place. A crucial role in ensuring the victims of this horrifying massacre received justice was played by the

witness, whose life was brutally taken shortly after leaving home. The irony that the Supreme Court itself had ordered police protection for the witness, highlighting the system’s failure to protect their life, is what makes this incident especially upsetting. The prosecution of such serious crimes is weakened by this failure, which also erodes public confidence in the legal system and deters potential witnesses from coming forward. This case is a sobering reminder of how desperately India needs strong and reliable witness protection laws in order to guarantee that justice is done without putting the lives of those defending it in jeopardy. The Supreme Court has underscored the critical importance of establishing a supportive and secure environment for vulnerable witnesses, particularly for those who are minor survivors of rape or victims of sexual abuse. These individuals often face immense challenges and emotional turmoil when asked to testify and they frequently experience fear or intimidation in traditional courtroom settings. To acknowledge and address the trauma and psychological distress that such witnesses endure, the apex court has set forth a significant directive that mandates the creation of at least two dedicated vulnerable witness deposition centres within the jurisdiction of every high court accomplished within a three-month timeframe. Demonstrating the court’s urgency in addressing this vital issue.

### **Witness**

A witness is a person who testifies or makes statements in courts to assist in making decisions about cases. Assuring the administration of justice requires them to share information in an open and fearless manner. It is defined under “Section 124 of the BSA, 2023”. This section states that anyone can testify unless the court determines that a witness is incapable of understanding the questions posed or providing a reasonable response. Even so, if they are able to comprehend the questions and respond logically, an unsound mind person may still serve as a witness.

### **Rights of Witnesses**

1. As stated in “Krishan Bans Bhadur v. State of Himachal Pradesh”, a witness may only be called for an investigation if they are within the jurisdiction of the police station or a nearby police station.
2. For investigation purposes, male witnesses under the age of 15 and female witnesses of any age may not be called to any location other than their home.
3. It is not necessary for a witness to sign statements obtained under “Section 179 of BNSS”.
4. One cannot be corrected into saying something that would implicate themselves.
5. Compensation in accordance with the relevant regulations must be given to witnesses who are called for questioning or during court proceedings.

### **Categorization of threats**

According to the threat which witnesses face, the scheme divides witnesses into three groups. Situations falling under “Category A” include those in which the witnesses or their family members lives are in danger both during and following the trial. Threats against the witness’s property, reputation, or safety fall under “Category B”. Threats in “Category C” are categorized as moderate and usually involve intimidation or harassment. With protocols in place to permit testimony through video conference or other

means to avoid direct exposure in the courtroom, the scheme also ensures confidentiality by protecting the identities of witnesses. To further finance the actions under this Scheme, a “Witness Protection Fund” has been established. Court-imposed fines, donations from philanthropists or charitable organizations, and budgetary allotments from the State Government all support this fund. Every “District and Sessions Judge has a Witness Protection Cell”, which is responsible for overseeing the state’s implementation of the “Witness Protection Scheme”. This authority receives applications from witnesses seeking protection, and it decides what to do depending on how serious the threat is. The Supreme Court is empowered to oversee the scheme’s execution and guarantee that it is applied uniformly in every state.

### Types of Protections

1. Changing their identity is one of the main ways that witnesses are protected from being easily located or targeted by people who want to threaten or harm them.
2. Another important type of protection is relocation, which involves taking witnesses to a new location or city, far from their familiar surroundings and potential attackers.
3. Retaining the anonymity of a witness throughout legal proceedings is a crucial precaution, especially in situations where the witness may be endangered by public exposure.
4. In witness homes, installing security equipment is also a crucial step in ensuring their safety in their own residences.
5. Witness protection also involves providing security escorts to and from the court. This makes certain that witnesses are accompanied to and from court by trained individuals, typically law enforcement officers, to guard against any harassment, intimidation, or injury during their travels, especially if their testimony carries a high risk.

The use of force and financial pressure by the accused, threats and intimidation, and various forms of inducement have all been noted by the court as reasons why witnesses may become hostile during trials. This problem is further compounded by the existence of “Stock Witnesses” or people who fabricate testimony in favour of the prosecution during lengthy trials, and the challenges witnesses encounter while being investigated and tried. The issue is further made worse by the absence of clear laws to deal with witnesses animosity.

### Procedure for application filing

The “ACP or DSP” in charge of the relevant police subdivision is immediately ordered to provide a threat analysis report upon receipt of an application in the prescribed form by the public prosecutor of the competent authority. The competent authority may also grant temporary protection orders for the witness or their family while the application is pending, contingent upon the urgency arising from an impending threat. Within five working days of receiving the order, the threat analysis report needs to be completed in a timely and private manner and turned in to the competent authority. In compliance with “Section 7”, this report proposes preventive measures and classifies the threat perception. The competent authority

contacts the witness, their family, and employers, if possible, in person or electronically, to determine the need for witness protection while processing the application. To ensure strict confidentiality, all hearings on witness protection applications are conducted on camera. After being approved by the competent authority, the witness protection order is carried out by the state’s witness protection cell or the trial court, as appropriate. The state’s head of police is ultimately in charge of overseeing the witness protection order’s implementation. Then, the concerned department identifies changes and relocation. This cell must submit a monthly report to the competent authority. After the trial is over, a new threat analysis report is requested from the “ACP or DSP”, and the competent authority will decide whether to amend the witness protection order.

### Need of the Scheme

- Being a member of marginalized social or economic groups puts victims and witnesses of serious crimes, especially those involving wealthy, powerful, or influential perpetrators, at serious risk.
- Particularly at risk are women and girls who report sexual violence, they frequently face severe coercion or outright threats from the accused, discouraging them from pursuing legal action.
- To help law enforcement and prosecution officials, witnesses must have confidence in their abilities. This assurance of receiving sufficient support and protection is the source of this confidence.
- Witness safety is still mostly unaddressed and unsatisfactory with current measures, such as using special courtrooms for vulnerable witnesses and hiding the identity of witnesses in anti-terrorism cases.
- The justice delivery system has been undermined by insufficient protections against witness tampering caused by the lack of a strong and consistent legislative framework.
- Enforcing justice and preserving public confidence in the legal system now requires the immediate and fundamental introduction of comprehensive legislative measures for witness protection.

### Drawbacks

Inadequate infrastructure has resulted from numerous states lack of funding for witness protection programs. The inability of the police and judicial authorities to work together effectively also makes it challenging to provide adequate protection for witnesses who are actually under threat. States also differ in how they carry out their witness protection laws, which results in a great deal of variation and uneven protection for witnesses across the country.

### Conclusion

Strong legal protection for witnesses is desperately needed, as evidenced by the difficulties they face in India, including threats to their lives and well-being. Given these difficulties, a thorough Witness protection law incorporating provisions for identity protection, relocation, and financial support is necessary to guarantee justice, particularly in highprofile and delicate cases where the testimony of witnesses has the potential to make or break the case. The “Witness Protection Scheme, 2018”, which protects witnesses who are critical to the prosecution’s case, is a significant step toward bolstering the legal system. The objective of this scheme is to enhance

the integrity and efficacy of the Indian justice system by promoting the coming forward of more witnesses without fear of retaliation by offering a methodical approach to witness protection. To address any shortcomings and difficulties in the protection of witnesses, it is still imperative that these provisions be fully implemented, including with regard to sufficient funding, training, and coordination amongst different authorities.

### Way Forward

The need for a thorough and efficient witness protection law in India is highlighted by this scheme, which is necessary to maintain the integrity of the legal system. There are states that have implemented witness protection laws, but there is still no formal, nationally implemented program in place.

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