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## **WITNESS PROTECTION IN INDIA: AN EVALUATION OF ITS ROLE IN ENSURING FAIR CRIMINAL TRIALS**

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### **ABSTRACT**

In the administration of criminal justice, witnesses play a crucial role since their evidence often helps courts resolve contentious factual issues and reach fair decisions. However, witnesses may be prevented from freely and honestly testifying by pressure, threats, intimidation, and other forms of influence. the ensuing phenomena of witness animosity might jeopardize the larger goal of a fair criminal trial in addition to having an impact on specific cases. In *Mahender Chawla v. Union of India*, the Supreme court of India, acknowledged the importance of systematic witness protection by approving the Witness Protection Scheme, 2018 and directing its implementation nationwide and suitable legislation was passed. Section 398 of the *Bhartiya Nagarik Suraksha Sanhita 2023 (BNSS)*, which specifically mandates that each state government create and announce a Witness protection scheme, is a further development. In the framework of just criminal proceedings, this essay critically assesses the evolution and efficacy of witness protection in India. The main characteristics of the Witness Protection Scheme, 2018, the constitutional underpinnings of witness protection, the judicial development of the concept, and the legislative recognition later granted under the BNSS are all examined. The study tells that even though India has made great strides in acknowledging witness protection as a crucial part of criminal justice, the frameworks efficacy ultimately rests on its consistent application, institutional capacity, sufficient resources, and the authority's capacity to react appropriately to varying degrees of threat. Therefore, the study aims to evaluate whether the current framework adequately balances the interests of victims, witnesses, accused individuals, and the administration of justice.

## 1. INTRODUCTION

One of the main pillars of criminal adjudication is the testimony of witnesses. In many prosecutions, the testimony of those who witnessed an incident, took part in an inquiry, or had pertinent information is crucial to determining guilt or innocence. A criminal court bases its decisions on legally admissible evidence. As a result, the witness plays a crucial role in the administration of justice in addition to being a source of evidence.

The problem occurs when a witness's willingness or capacity to testify is impacted by fear. Threats could affect the witness directly, their family, their property, their livelihood, or their reputation. Intimidation may be employed in serious crimes, especially those involving organized crime, prominent accused individuals, or strong local interests, with the goal of distorting the legal system in addition to silencing witnesses. A witness who is coerced into changing their testimony may become antagonistic; a witness who declines to present may cause the procedures to be delayed; and a witness who testifies out of fear may give testimony that is not true to what they know.

Thus, the connection between a fair trial and witness protection is essential. The Supreme Court has construed Article 21 of the Indian Constitution to include the need for justice in criminal proceedings. It is impossible to comprehend the idea of a fair trial solely from the viewpoint of the accused. Additionally, it mandates that the criminal justice system function under conditions that allow pertinent witnesses to testify in court without being subjected to illegal coercion or intimidation. The Supreme Court emphasized in *Zahira Habibullah Sheikh v. State of Gujarat* the significance of an honest and efficient trial where the truth can be revealed without undue interference.

Witness intimidation is not a new issue. The Law Commission of India had previously looked into the challenge's witnesses faced and suggested ways to strengthen their security. The 198th Report of the Law Commission acknowledged that witnesses may be subject to threats and that the criminal justice system needs institutional tools to manage such concerns, particularly with regard to witness identity protection and witness protection programs.

The creation of India's witness-protection system was subsequently significantly accelerated by judicial intervention. The Supreme Court authorized the Witness Protection Scheme, 2018 in *Mahender Chawla v. Union of India* after considering the lack of a suitable legislative

framework. The Court ruled that the Scheme would function as law under Articles 141 and 142 of the Constitution until suitable legislation was passed, and it instructed the Union Government, States, and Union Territories to implement it.

A structured methodology based on threat assessment was developed under the Witness Protection Scheme, 2018. It considers actions such as police protection, identity protection, relocation, installation of security devices, and other suitable protections, and it allows for the classification of witnesses based on the type and degree of the threat. Additionally, the Scheme establishes a Witness Protection Fund and a Competent Authority.

The passing of the Bharatiya Nagarik Suraksha Sanhita, 2023, was a significant legislative development. With effect from July 1, 2024, the BNSS superseded the Code of Criminal Procedure, 1973 as the main criminal procedure law in India. Every State Government is required by Section 398 of the BNSS to create and announce a Witness Protection Scheme.

An important advancement is its statutory recognition. However, effective protection is not always ensured by the existence of a legal requirement. The ability of authorities to swiftly identify threats, offer appropriate protection, maintain anonymity, and guaranty that protective measures continue for as long as necessary determines the practical efficacy of witness protection.

The development shows that the lack of a legal framework is no longer the only issue with witness protection in India. Implementation, institutional capability, and homogeneity are becoming more and more of the modern challenges. Therefore, this study assesses whether the current system can effectively safeguard witnesses and, as a result, if it sufficiently supports fair criminal prosecutions.

## **2. RESEARCH PROBLEM**

The capacity of witnesses to participate in proceedings without fear or intimidation is crucial to the efficacy of a criminal justice system. There are still concerns about the actual application of the Witness Protection Scheme, 2018 and the consequent statutory acknowledgment of witness protection under section 398 of the BNSS.

This paper's main research question is whether India's current witness protection system is adequate to guaranty that witnesses can freely testify and support just criminal prosecutions.

Because witness protection involves conflicting interests, the issue takes on special significance. The accused maintains the constitutional right to a fair trial and must be given a meaningful opportunity to contest prosecution evidence, even while witnesses must be shielded from threats and intimidation. As a result, a witness-protection system needs to strike a balance between security and confidentiality, transparency, disclosure, and the accused's rights.

### **3. RESEARCH QUESTIONS**

The study seeks to answer the following questions:

1. What is the constitutional and legal basis for witness protection in India?
2. How has the Indian judiciary contributed to the evolution of witness-protection mechanisms?
3. To what extent does the Witness Protection Scheme, 2018 provide an effective mechanism for protecting witnesses?
4. How has section 398 of the Bharatiya Nagarik Suraksha Sanhita, 2023 altered the legal position concerning witness protection?
5. What are the principal institutional and practical challenges affecting the implementation of witness-protection measures in India?
6. To what extent does effective witness protection contribute to the constitutional requirement of a fair criminal trial?
7. What reforms are necessary to strengthen witness protection while preserving the procedural rights of the accused?

### **4. RESEARCH OBJECTIVE**

This research aims to investigate the development and importance of witness protection in the Indian criminal court system. It seeks to analyse the constitutional underpinnings of witness protection and look at how the Law Commission and courts have contributed to its advancement.

The study also looks at the importance of statutory recognition under section 398 of the Bharatiya Nagarik Suraksha Sanhita, 2023, and critically assesses the Witness Protection Scheme, 2018. Additionally, it seeks to assess the relationship between witness security and the accused's right to a fair trial, identify institutional and practical flaws in the current framework, and investigate witness intimidation and its connection to hostile testimony.

Lastly, the study suggests institutional, administrative, and legislative changes that could enhance the efficiency of witness protection in India.

## **5. CONCEPT AND SIGNIFICANCE OF WITNESS PROTECTION**

A variety of legal, procedural, administrative, and security procedures intended to shield a witness from threats, intimidation, coercion, or reprisal resulting from the witness's involvement in criminal proceedings can be collectively referred to as witness protection.

The unequal situation that may exist between an individual witness and an accused person or criminal organization with the ability to exert influence gives rise to the necessity for witness protection. Even if a witness has crucial knowledge about an offense, they could be reluctant to reveal it if doing so would put them or their loved ones in danger.

There are various ways to intimidate witnesses. The most visible kind of intimidation is physical threats, but it can also take the shape of financial pressure, social exclusion, threats against family members, property damage, harassment, or manipulation of one's job and means of subsistence. Because personal information may spread quickly across digital platforms, modern technology has added another layer

Witness intimidation has repercussions that go beyond the victim. The court's capacity to ascertain the facts may be jeopardized if witnesses are unable or unwilling to give truthful testimony. An unsuccessful prosecution, drawn-out legal proceedings, or an improper court decision could be the outcome.

The jurisprudence of the Supreme Court shows that the formal presence of a courtroom is not sufficient for the administration of criminal justice. The Court emphasized in *Zahira Habibullah Sheik* that the trial must be conducted in a way that allows the truth to come to light. An essential theoretical basis for witness protection is provided by this principle.

Therefore, witness protection should be seen as a way to maintain the integrity of the process of gathering evidence and making decisions. It is not meant to disadvantage the accused or favour the prosecution. Its justifiable goal is to guarantee that witnesses can take part in processes without facing illegal outside coercion.

## **6. CONSTITUTIONAL AND LEGAL FRAMEWORK OF WITNESS PROTECTION IN INDIA**

In India, the constitutional assurance of a fair criminal trial is intimately linked to witness protection. A criminal trial is an organized process in which the court aims to uncover the truth while safeguarding the rights and interests of all parties involved. It is not only a procedure for deciding whether the accused is guilty or innocent. Witnesses play a crucial role in this process because their testimony is often a significant source of evidence. The credibility of the proceedings and the administration of justice may be endangered when witnesses are threatened, intimidated, coerced, or retaliated against.

Article 21 of the Indian Constitution, which protects the right to life and personal liberty, serves as the main constitutional basis for witness protection. Article 21's protection of life extends beyond protection from direct bodily harm to include the necessary conditions for a person to actively engage in the legal system. The State must provide suitable protection to a witness who is genuinely in danger of losing their life or liberty as a result of their cooperation with law enforcement or courts.<sup>1</sup>

As a result, witness protection might be seen as a crucial part of the larger constitutional duty to uphold a reasonable, fair, and just criminal justice system.

Because it ensures equality before the law and equal protection under the law, Article 14 also gains significance. If a witness's ability to testify is determined by intimidation, social influence, economic power, or political influence, criminal justice cannot be deemed truly fair. The goal of effective witness protection is to prevent such outside influences from distorting the evidence that is given in court. As a result, it helps to preserve impartiality and equality in the criminal justice system.

An appropriate balance between the interests of the accused, victim, and witness is also

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<sup>1</sup> The Constitution of India, 1950, arts. 14 and 21.

required under the constitutional notion of a fair trial. Witness protection cannot be applied in a way that totally ignores the accused's right to self-defence. Generally, the accused must be given a significant chance to learn about and contest the evidence offered by the prosecution. Therefore, actions like identity protection, limited disclosure, relocation, or technology-assisted testimony ought to be commensurate with the danger the witness faces. The goal is to prevent intimidation and terror from influencing the outcome of the trial, not to give the prosecution an advantage.

Through the Witness Protection Scheme, 2018, the legislative framework for witness protection underwent significant institutional growth. The Scheme was designed to allow witnesses to take part in criminal trials without fear of retaliation or intimidation. It offered various protection categories based on the level of risk the witness faced and established a systematic mechanism based on threat assessment. Identity protection, police security, temporary relocation, financial support, and other suitable protections are among the solutions that are being considered.

The Scheme's insight that witness protection must depend on the type and severity of the threat is one of its most significant features. This keeps protection from being viewed as a standard policy that applies to all witnesses. Basic security measures might be necessary for a witness who faces a minor threat, while relocation or identity-related protection might be necessary for a witness who faces a major threat to their life. By using a risk-based approach, protection measures can be kept reasonable and resources can be allocated to witnesses who are most in danger.

Additionally, the Scheme acknowledges the significance of institutional responsibility. The informal discretion of investigative authorities or individual police officers cannot be the only factors used to protect witnesses. To guarantee responsibility, an organized system with threat assessment, protective orders, and execution duties is required. Because intimidation can come from those with substantial social, economic, or political influence, this institutional approach is especially crucial. The Bharatiya Nagarik Suraksha Sanhita, 2023 was a significant legal development. Every State Government is required by Section 398 to create and announce a Witness Protection Plan for the State. The clause, which gave witness protection formal legitimacy within the main framework controlling criminal proceedings, went into effect on July 1, 2024. This is a significant shift from a safeguard created by judicial action to a clear

legal requirement placed on state governments Section 398's importance goes beyond just mandating that states create plans. It demonstrates how crucial witness protection is to the criminal justice system's operation. State authorities are required by law to establish a system that protects witnesses from intimidation and threats. However, actual implementation, sufficient funds, skilled staff, and cooperation between police, prosecutors, and courts are necessary for its efficiency.<sup>2</sup>

The larger evidential framework that underpins witness protection also includes the Bharatiya Sakshya Adhiniyam, 2023. Witness protection must be considered in addition to the validity, admissibility, and testing of evidence since witness testimony is essential to the evidential process. While maintaining the accused's procedural rights, protective measures should enable honest testimony. Thus, there is a reciprocal relationship between witness protection and a fair trial. On the one hand, protection allows witnesses to testify without fear; on the other side, trustworthy and freely provided testimony helps the court make a fair decision. The criminal trial's ability to find the truth may be severely hampered when witnesses are coerced into retracting, changing, or concealing their testimony. In these situations, the victim, the accused, the prosecution, and society at large are all impacted in addition to the specific witness.<sup>3</sup>

As a result, the Indian legal system has begun to acknowledge that the security of witnesses and the impartiality of criminal trials are related goals. The fundamental principles are provided by constitutional safeguards, and their practical application is facilitated by the Witness Protection Scheme, 2018 and Section 398 of the BNSS. Making sure these safeguards function consistently and successfully so that no witness is compelled to choose between their personal safety and taking part in the administration of justice is an ongoing problem.

## **7. WITNESS PROTECTION SCHEME ,2018: A CRITICAL ANALYSIS**

The Witness Protection Scheme, 2018 <sup>4</sup>was established to ensure witnesses' freedom to testify and to shield them from threats, intimidation, and physical abuse. Depending on how serious the threat is, the Scheme divides witnesses into Categories A, B, and C and offers security measures such police protection, identity protection, relocation, temporary housing, and other

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<sup>2</sup> The Bharatiya Nagarik Suraksha Sanhita, 2023, Sec 398.

<sup>3</sup> The Bharatiya Sakshya Adhiniyam, 2023.

<sup>4</sup> Ministry of Home Affairs, Government of India, Witness Protection Scheme, 2018.



solutions. To pay for these actions, it also creates a Witness Protection Fund.

In *Mahender Chawla v. Union of India*, the Supreme Court upheld the Scheme's constitutional significance and ordered its implementation across India until suitable legislation was developed. . Because witnesses may withdraw, alter, or suppress their testimony due to fear or coercion, the Scheme acknowledges that witness protection is crucial to an equitable and efficient criminal justice system. . Despite these protections, there are also practical issues, such as poor execution, a lack of funding, delays in threat assessment, and the lack of comprehensive legislative legislation that only governs witness protection. Therefore, in order to provide effective protection, the police, prosecution, judiciary, and government authorities must all work together to develop a statutory structure.

## 8. JUDICIAL APPROACH TO WITNESS PROTECTION

The development of the law pertaining to witness protection has been greatly aided by the Indian judiciary. The Supreme Court emphasized in *Zahira Habibulla H. Sheik v. State of Gujarat*<sup>5</sup> that a fair trial necessitates an efficient and impartial legal system that allows witnesses to testify free from coercion or outside influence. In *Mahender Chawla v. Union of India*, the Supreme Court recognized witness protection more precisely, ruling that a fair trial depends on witnesses' freedom to testify without fear or intimidation. The Witness Protection Scheme, 2018 was approved by the Court, which also ordered its nationwide application until suitable legislation was drafted. In subsequent cases, the judicial perspective has continued to evolve. The Supreme Court examined the significance of the Witness Protection Scheme's efficient execution in *Bhagwan Singh v. State of Uttar Pradesh* and emphasized the ongoing issues with witness intimidation and threats. The ruling shows that efficient institutional implementation of witness protection must coexist with judicial recognition.<sup>6</sup>

In 2025, *Phireram v. State of Uttar Pradesh* was a particularly important development. The Witness Protection Scheme, 2018 is a curative and corrective procedure designed to shield witnesses from the consequences of intimidation and threats, the Supreme Court explained. The Court ruled that in cases when an accused person violates bail conditions by intimidating witnesses, the Scheme's existence cannot be utilized as a stand-in for bail cancellation. Witness protection and bail cancellation have separate functions and must be used together. . The Court

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<sup>5</sup> *Zahira Habibulla H. Sheikh v. State of Gujarat*, (2004) 4 SCC 158.

<sup>6</sup> *Mahender Chawla v. Union of India*, (2019) 14 SCC 615.

further emphasized that the executive authorities are not solely responsible for maintaining the integrity of a criminal trial. Additionally, courts have an ongoing responsibility to prevent intimidation or threats from impeding the administration of justice.<sup>7</sup>

The ruling is especially significant because it defines the connection between witness protection, bail, and the court's obligation to ensure a fair trial, going beyond just acknowledging the necessity of witness protection. As a result, the Indian legal system has progressively changed from acknowledging the vulnerability of witnesses to requiring appropriate protection and judicial involvement when intimidation jeopardizes the impartiality of proceedings. The recent rulings uphold the idea that witness protection should complement criminal courts' regular authority rather than take its place.

## 9. SUGGESTIONS AND REFORMS

A transition from a primarily reactive security structure to a rights-based and institutionally accountable one is necessary for witness protection in India to be effective. A legal basis is provided under Section 398 of the Bharatiya Nagarik Suraksha Sanhita, 2023, which mandates that each State Government announce a Witness Protection Scheme. To certify consistency in danger assessment, secrecy, relocation, and financial aid among States, basic national standards should be set. It is necessary to establish specialized witness protection units with qualified staff in charge of carrying out timely and recurring threat assessments. Depending on the type and severity of the threat, protection should be extended to family members as needed. To guaranty that relocation, security, and rehabilitation initiatives are not hampered by budgetary constraints, sufficient and committed funding is also required.

Digital intimidation and privacy issues, especially the unapproved revelation of a witness's identify or whereabouts, should also be covered by the framework. Protective measures must, however, continue to be reasonable and not interfere with the accused's right to a fair trial and a strong defence.

Lastly, to ensure that protection orders are carried out successfully, judicial control and independent monitoring should be reinforced. In the end, witness protection must be viewed as an institutional duty required to maintain the integrity and legitimacy of criminal justice, not

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<sup>7</sup> Phireram v. State of Uttar Pradesh & Anr., 2025

as a discretionary administrative action.

## **10. CONCLUSION**

A fair and efficient criminal justice system must include witness protection. Threats, intimidation, compulsion, and retaliation may discourage witnesses from freely and honestly testifying, despite the fact that they are vital sources of information for establishing the truth. The legal framework for protecting witnesses has been reinforced by the Witness Protection Scheme, 2018 and the statutory acknowledgment of witness protection under Section 398 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

However, appropriate execution is necessary for these strategies to be effective. Witness security is still impacted by issues like insufficient resources, delayed threat assessment, uneven implementation, and confidentiality risks. Therefore, sufficient finance, specialized defence mechanisms, prompt threat assessment, and efficient institutional coordination are necessary for a stronger system.

Beyond just physical security, witness protection should also cover privacy, family safety, relocation, and, if needed, rehabilitation. Protective measures must, however, strike the right balance between the accused's rights and the ideals of a fair trial.

In the end, good witness protection guarantees that people can take part in court procedures without fear, enhances the credibility of evidence, and fosters trust in the criminal justice system. Only when witnesses are sufficiently protected to speak the truth without fear of retaliation can a justice system operate well.

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