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## **WITNESS PROTECTION SCHEME UNDER BNSS**

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### **ABSTRACT**

Witness protection constitutes a vital pillar of India's criminal justice system, as the effective administration of justice depends upon truthful and fearless testimony. This Article examines the constitutional, statutory, and judicial framework governing witness protection in India. It begins by analysing the conceptual and legal understanding of a "witness" under the *Bhartiya Sakshya Adhiniyam, 2023*, and highlights the central role of witnesses in ensuring fair trial and rule of law. Further, it traces the historical evolution of witness protection, from early Law Commission recommendations and judicial observations to the formulation of the Witness Protection Scheme, 2018 and Section 398 of the *Bhartiya Nagarik Suraksha Sanhita, 2023*.

The Article identifies existing gaps in implementation, including overreliance on police discretion, temporary safeguards, and uneven state compliance. It concludes by suggesting structural, institutional, and technological reforms necessary to transform witness protection from a reactive mechanism into a robust, rights-based constitutional safeguard.

## INTRODUCTION

India's criminal justice system forms the very backbone of our constitutional democracy. It is not merely a mechanism to punish offenders but it is a framework designed to uphold the rule of law, maintain social order, and most importantly, protect fundamental rights. The criminal justice system operates through several interconnected institutions. The police investigate offences and collect evidence. Prosecutors represent the State and present the case before courts. The judiciary acts as an independent organ, determining guilt or innocence based on evidence and law. Despite this elaborate legal framework, one of the most pressing challenges faced by the system is the relatively low conviction rate in crimes due to witnesses turning hostile as they frequently face intimidation, threats, social pressure, financial inducements, or even physical violence. Fear of retaliation not only against themselves but against their families compels many to retract statements or refuse to testify truthfully in court. This creates a dangerous cycle as witnesses withdraw support and prosecution cases weaken.

Witness protection is essential because the entire criminal justice system depends upon truthful and fearless testimony. If witnesses are unsafe, intimidated, or silenced, justice cannot function effectively. A legal system that cannot protect its witnesses cannot protect truth itself.

Jeremy Bentham once famously remarked, "Witnesses are the eyes and ears of justice."<sup>1</sup> This statement captures the very essence of criminal adjudication. Courts do not directly witness crimes. Judges do not stand at the crime scene. Instead, the judicial system reconstructs events through human testimony. A witness bridges the gap between the past event and the present courtroom. Without witnesses, justice would operate in darkness.

The importance of witness testimony is not merely procedural, it is philosophical and constitutional. The criminal justice system rests upon fairness. As Sir William Blackstone articulated in his celebrated formulation, "It is better that ten guilty persons escape than that one innocent suffer." This principle underscores the moral foundation of criminal law the protection of the innocent is paramount<sup>2</sup>. However, protecting the innocent requires reliable, credible, and fearless testimony. If witnesses are intimidated into silence or coerced into falsehood, the entire moral balance of justice collapses. A witness therefore, is not merely a

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<sup>1</sup> Uday Shankar M "The Concept and History of Witness Protection Act in India," *Indian Journal of Science and Research*, Vol. 12 (2023).

<sup>2</sup> Sneha Patidar "Witness Protection Scheme under BNSS, 2023". *Civil And Criminal Justice Cell*, available at [https://ccjc.nliu.ac.in/2025/04/17/witness-protection-scheme-under-bnss/#\\_edn5](https://ccjc.nliu.ac.in/2025/04/17/witness-protection-scheme-under-bnss/#_edn5) (last visited Feb 20, 2026).

participant in the process, a witness is an instrument through which justice breathes.

The legal framework governing witness protection in India initially operated through the Witness Protection Scheme, 2018, approved by the Supreme Court after long-standing recommendations by bodies such as the Law Commission and observations in key criminal cases highlighting witness hostility. The Scheme functioned as an interim protective mechanism across states. With the enactment of the Bhartiya Nagarik Suraksha Sanhita, 2023, statutory recognition has now been provided under Section 398, which mandates every State to prepare and notify a witness protection scheme. Thus, witness protection today operates under the 2018 Scheme read with Section 398 BNSS.

### **MEANING AND LEGAL UNDERSTANDING OF A WITNESS**

According to Black's Law Dictionary, "a witness is anyone giving testimony or bearing knowledge about an alleged offense."<sup>3</sup>This definition emphasizes two essential elements: knowledge and testimony. A witness is someone who possesses information about an event and is willing to share it before a competent authority.

In simple terms, a witness is a person who has personally seen, heard, or experienced an event whether that event is a crime, an accident, or a legally relevant occurrence. The law recognizes that justice cannot function unless individuals are willing to come forward and speak the truth.

The legal framework governing witnesses is incorporated in chapter IX Sections 124 to 139 of The Bhartiya Sakshya Adhinyam, 2023.<sup>4</sup>

### **COMPETENCY OF WITNESSES**

Section 124 of The Bhartiya Sakshya Adhinyam laid down that all persons are competent to testify unless they are incapable of understanding the questions put to them or giving rational answers due to tender age, extreme old age, disease, or any similar cause.<sup>5</sup>This shows that the law presumes competency. A child can testify. An elderly person can testify. A man or woman can testify. Education level is irrelevant. Social status is irrelevant. The only test is rational understanding and the ability to give coherent answers. This principle reflects equality before

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<sup>3</sup> Black's Law Dictionary (10th ed., 2014), "Witness", p. 1842.

<sup>4</sup> The Bhartiya Sakshya Adhinyam, 2023 (Act no. 47 of 2023).

<sup>5</sup> The Bhartiya Sakshya Adhinyam, 2023 (Act no. 47 of 2023) s. 124.

law and inclusivity within the justice system.

## TYPES OF WITNESSES

1. **Eyewitnesses** – Individuals who directly observed the crime. Their testimony often plays a decisive role in determining guilt or innocence.
2. **Victims as Witnesses** – In many cases, particularly sexual offences and assault, the victim is the primary witness.
3. **Expert Witnesses** – Forensic experts, doctors, and specialists who provide technical evidence.
4. **Whistleblowers** – Individuals who expose corruption or systemic wrongdoing.
5. **Vulnerable Witnesses** – Children, survivors of abuse, persons with disabilities, or marginalized individuals who face greater risk of intimidation.
6. **Hostile Witnesses** – Those who change their statement in court, often due to pressure or inducement.
7. **Collaborators or Accomplices** – Insiders within criminal networks who cooperate with authorities and therefore face significant risk.<sup>6</sup>

## CLASSIFICATION OF WITNESS UNDER WITNESS PROTECTION SCHEME, 2018

Under the Witness Protection Scheme, 2018, witnesses were categorized according to threat perception. This classification ensured that protective measures were proportionate to the level of risk. The categories are as follows:

- **Category A** – Threat to life or grievous harm.
- **Category B** – Threat to safety, property, or reputation.
- **Category C** – Moderate threat such as harassment or intimidation.<sup>7</sup>

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<sup>6</sup> Ajitabh Mishra “Effectiveness of the Witness Protection Scheme, 2018 in Punjab,” *International Research Journal of Commerce and Law*, Vol. 12 (2024).

<sup>7</sup> Dr. Abhishek Gandhi “Ensuring Justice: Understanding the “Witness Protection Scheme” and Its Role in India’s

## WHY WITNESS PROTECTION IS NEEDED

### 1. To Ensure Fair Trial under Article 21

A fair trial is not possible if witnesses are afraid to speak the truth. Article 21 guarantees life and personal liberty, which includes the right to fair procedure. If a witness fears retaliation, their testimony becomes compromised, and the constitutional promise of justice becomes meaningless.

### 2. To Strengthen the Credibility of the Criminal Justice System

When witnesses turn hostile, acquittals increase, and public trust decreases. Effective witness protection ensures that those who come forward are not punished for assisting justice. This builds institutional confidence and improves conviction rates.

### 3. To Break the Cycle of Criminal Influence

In cases involving organized crime, political power, or economic influence, intimidation is common. Protection mechanisms empower ordinary citizens to stand against powerful accused persons. Without protection, the rule of law becomes subordinate to fear.

## HISTORICAL EVOLUTION OF WITNESS PROTECTION IN INDIA

The concept of witness protection in India developed gradually in response to increasing concerns about witness intimidation, hostile testimonies, and declining conviction rates. Over decades, courts, law reform bodies, and expert committees repeatedly highlighted the urgent need to safeguard witnesses to preserve the integrity of criminal trials. The evolution of witness protection reflects a shift from mere academic recommendations to judicial directives and finally to statutory recognition.<sup>8</sup>

The need for a comprehensive witness protection framework in India has been recognized for decades. The first reference to witness protection was made in the 14th Law Commission Report in 1958,<sup>9</sup> which highlighted the necessity for a structured approach to safeguard

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Criminal Justice System,” available at <https://advocategandhi.com/ensuring-justice-understanding-the-witness-protection-scheme-and-its-role-in-indias-criminal-justice-system/> (last visited Feb 20, 2026).

<sup>8</sup> Kanak Pathak “Witness Protection Scheme 2.0 under BNSS, 2023”. *Law Jurist*, available at <https://lawjurist.com/index.php/2026/01/16/witness-protection-2-0-under-the-bnss-2023/> (last visited 20, 2026).

<sup>9</sup>14th Law Commission Report on Reform of Judicial Administration (1958), Vol. 1, Ch.5, pg.37.

witnesses. It acknowledged that witnesses were reluctant to depose due to fear, inconvenience, and lack of protection, and recommended structural reforms to improve their treatment. This was followed by the 154th Law Commission Report, which emphasized the need for realistic allowances for witnesses and proper arrangements during trials.<sup>10</sup> The 178th Law Commission Report<sup>11</sup> further recommended implementing laws for witness anonymity to protect them from threats linked to their identities. Finally, the 198th Law Commission Report<sup>12</sup> categorized witnesses into three groups based on threat levels: those whose lives are at risk, those facing threats to their safety or reputation, and those experiencing moderate harassment. The Malimath Committee report on reforms in 2003 recognized that witness hostility was one of the biggest weaknesses of Indian criminal trials and made recommendations regarding witness protection.

The issue of witness protection gained significant judicial attention as well. In the landmark case of *Sakshi v. Union of India*<sup>13</sup> Sakshi NGO filed PIL highlighting child sexual abuse victims retraumatized by courtroom confrontation. Supreme Court acknowledged lack of protection against witnesses that discourages truthful accounts and recommended in-camera proceedings (closed-door trials), screens/shields to prevent direct accused-witness contact, and video testimony. Further, in Best Bakery Case (*Zahira Habibullah H. Sheikh v. State of Gujarat*),<sup>14</sup> A bakery of Vadodara was torched, and a girl named Zahira and other witnesses saw that. But later during trial everyone turned hostile under political pressure which led to acquittal of accused's. SC condemned this and ordered retrial in which 11 accused were convicted.

### **WITNESS PROTECTION SCHEME, 2018**

Building on these developments, the Government of India finally took concrete steps toward establishing a comprehensive witness protection framework. In 2018, the Ministry of Home Affairs, in consultation with the National Legal Services Authority (NALSA) and other stakeholders, formulated the Witness Protection Scheme 2018. This was a significant milestone, as it was the first legal enactment set up by the Indian government to address the

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<sup>10</sup> The Code of Criminal Procedure, 1973 (Act No. 2 of 1974) Vol I & II.

<sup>11</sup> Law Commission of India, One Hundred and Seventy- Third Report on Prevention of Terrorism Bill, 2000 (April 2000).

<sup>12</sup> Law Commission of India, 198th Report on Witness Identity Protection and Witness Protection Programmes (August 2006).

<sup>13</sup> *Sakshi v. Union of India* 2004 AIR SC 3566.

<sup>14</sup> *Zahira Habibullah H. Sheikh v. State of Gujarat* 2004 4 SCC 158.

issue of witness protection. The Supreme Court of India approved the Witness Protection Scheme on December 5, 2018, during the proceedings of the Mahender Chawla case, which was filed in 2016.

In the landmark case of *Mahender Chawla v. Union of India*<sup>15</sup> 2018, the apex Court made the first attempt to protect witnesses under the ambit of law by introducing the Witness Protection Scheme, 2018. The case was filed as a writ petition under Article 32 that raised important issues dealing with the efficacy of the Indian criminal justice system in protecting witnesses. The petition sought protection for witnesses in cases against self-styled Godman Asaram Bapu, where three witnesses were killed and others were attacked or threatened as the cases went through courts. Recognizing the legislative inertia, the Court invoked its extraordinary powers under Article 141 and 142 of the Constitution to approve the Witness Protection Scheme 2018. The Court declared the Scheme to be the "law of the land" binding on all courts and states until Parliament enacted suitable legislation. This judicial acknowledgment highlighted the necessity for thorough witness protection measures in India.

The Scheme introduces a tiered classification system based on the severity and duration of the threat. This classification is critical as it determines the eligibility for specific protective measures, particularly the Witness Protection Fund.<sup>16</sup>

Category	Definition	Duration of Threat	Typical Protection Measures
<b>Category A</b>	Threat extends to the <i>life</i> of the witness or their family members.	During investigation, trial, or thereafter.	Relocation, Change of Identity, Close Protection Detail (Gunmen), In-camera trial.
<b>Category B</b>	Threat extends to <i>safety, reputation, or property</i> of the witness or family.	During investigation or trial.	Regular patrolling, Phone monitoring, CCTV installation, Police escort to

<sup>15</sup> *Mahender Chawla v. Union of India* 2019 14 SCC 615.

<sup>16</sup> Witness Protection Scheme, 2018, Clause 7 (India).

			court.
<b>Category C</b>	Threat is <i>moderate</i> , extending to harassment or intimidation.	During investigation or trial.	Emergency contact numbers, Legal warnings to accused, Temporary security.

**The Institutional Mechanism: Competent Authority under the Witness protection Scheme 2018**

The Scheme decentralizes decision-making to the district level.

- **Competent Authority (CA):** Chaired by the District and Sessions Judge, with the Head of the District Police as a Member and the Head of Prosecution as Member Secretary.<sup>17</sup>This composition acts as a check on police, as the judiciary plays a lead role. The involvement of the Head of Prosecution ensures that the legal necessity of the witness's testimony is weighed against the security costs.
- **Threat Analysis Report (TAR):** Upon receiving an application, the CA calls for a TAR from the police (ACP/DSP level). The police are mandated to submit this report within five working days, categorizing the threat as A, B, or C. The CA must then pass a protection order within five days of receiving the TAR. <sup>18</sup>This strict timeline aims to prevent the bureaucratic delays that previously left witnesses vulnerable during the critical pre-trial phase.
- **Review Mechanism:** Crucially, the Scheme provides for a review application within 15 days if the witness or police are aggrieved by the CA's order, though the reviewing authority is often implied to be the same body or the High Court in writ jurisdiction.<sup>19</sup>

**The Witness Protection Fund**

To finance the implementation of these protection measures, the scheme mandates the establishment of a State Witness Protection Fund, to be managed by the state or union territory

<sup>17</sup> Witness Protection Scheme, 2018, Clause 2(c).

<sup>18</sup> Witness Protection Scheme, 2018, Clause 6.

<sup>19</sup> Witness Protection Scheme, 2018, Clause 9.

government. Importantly, the scheme requires the Competent Authority to dispose of witness protection applications within a tight timeline of 5 working days of receiving the threat analysis report. This fund is intended to cover the costs of relocation, installation of security devices, and sustenance allowance for witnesses who lose their livelihood due to the trial.<sup>20</sup> The protection orders are also subject to regular monitoring and review to ensure their continued effectiveness.

Although the Witness Protection Scheme 2018 marks a significant advancement in protecting witnesses in India, it has certain inherent limitations and gaps that require attention. Firstly, the protection it provides is only for a specific duration of three months at a time, which may be insufficient in cases where the threat continues for a longer period. Secondly, the issuance of orders under the scheme largely relies on the recommendations or advice from Threat Analysis Reports (TARs) prepared by police officials, who may be susceptible to corruption and political pressure. Moreover, despite the scheme's emphasis on confidentiality and record preservation, it lacks penal provisions for violations. Additionally, unlike the Witness Protection Bill 2015, the scheme does not include provisions for the occupation, work, or education of witnesses during the interim period.

### **THE BHARTIYA NAGARIK SURAKSHA SANHITA: SECTION 398**

With the repeal of the Code of Criminal Procedure (CrPC) and the enactment of the Bhartiya Nagarik Suraksha Sanhita (BNSS), 2023, witness protection transitioned from a judicial directive to a statutory obligation. Section 398 of the BNSS is the enabling provision that codifies the state's duty. Section 398 states: "Every State Government shall prepare and notify a Witness Protection Scheme for the State with a view to ensure protection of the witnesses."<sup>21</sup> The use of the word "shall" impose a non-negotiable duty on the State Governments. Unlike the WPS 2018, which derived authority from Article 141, Section 398 is a direct legislative command. Failure to notify a scheme can now be challenged as a statutory violation, not just a contempt of court. This elevates witness protection to a substantive statutory right. The section also allows each state to "prepare and notify" its own scheme. While this allows for local adaptation, it risks creating a fragmented landscape where the quality of protection varies wildly based on state resources.

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<sup>20</sup> Witness Protection Scheme, 2018, Clause 11.

<sup>21</sup> The Bhartiya Nagarik Suraksha Sanhita, 2023 (Act 46 of 2023) s.398.

## STATE NOTIFICATIONS UNDER BNSS

Following the enactment of the Bhartiya Nagarik Suraksha Sanhita, 2023 (BNSS), several States and Union Territories have initiated steps to notify their respective Witness Protection Schemes under Section 398. These notifications operationalize statutory witness protection at the state level and provide legal enforceability to protection measures. For instance, the Chandigarh Witness Protection Scheme, 2024 has been formally notified under Section 398.<sup>22</sup> The Scheme defines “concealment of identity” and establishes a Standing Committee chaired by the District Judge, thereby largely retaining the administrative structure of the Witness Protection Scheme, 2018 namely, the combination of judicial supervision (District Judge) and police leadership. This continuity reflects an effort to institutionalize the earlier executive framework within a statutory structure.

Similarly, Haryana (2025) has operationalized a full-fledged scheme,<sup>23</sup> while Delhi (2025) has adopted protections suited to urban complexities.<sup>24</sup> Telangana has gazetted the Telangana Witness Protection Scheme, 2025 under Section 398, demonstrating legislative compliance.<sup>25</sup> Assam (2024) has introduced a risk-based framework for categorization of witnesses.<sup>26</sup>

However, compliance across states remains uneven as these guidelines strengthen courtroom safeguards, they do not constitute a comprehensive witness-protection mechanism in the broader sense. The significance of these state notifications lies in transforming witness protection from judicial discretion to an enforceable statutory entitlement, thereby granting witnesses locus standi to demand protection as a matter of right.

## THE WITNESS PROTECTION BILL, 2023

The Witness Protection Bill, 2023 was introduced on 2nd February 2024 with the objective of establishing a comprehensive statutory framework for the protection of witnesses in India.<sup>27</sup> The criminal justice system relies heavily upon witnesses to prove facts and secure convictions. However, witnesses in India frequently face threats, intimidation, inducement, coercion, and even physical violence, particularly in serious offences such as organized crime, terrorism,

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<sup>22</sup> Chandigarh Witness Protection Scheme, 2024.

<sup>23</sup> The Haryana Witness Protection Scheme 2025.

<sup>24</sup> The Delhi Witness Protection Scheme 2025.

<sup>25</sup> The Telangana Witness Protection Scheme 2025.

<sup>26</sup> The Assam Witness Protection Scheme 2024.

<sup>27</sup> The Witness Protection Bill, 2023 (Bill No. XLIX of 2023).

sexual offences, and corruption. Such pressure often results in witnesses turning hostile, thereby weakening prosecution cases and affecting the administration of justice. Although India has been operating under the Witness Protection Scheme, 2018, approved by the Supreme Court, there has been no dedicated parliamentary legislation governing witness protection. The Bill therefore seeks to convert witness protection from an executive scheme into a legally enforceable statutory right. It provides a broad definition of “witness,” including any person who gives or agrees to give evidence in judicial or quasi-judicial proceedings, thereby covering victims, expert witnesses, and other associated individuals.

One of the central features of the Bill is the establishment of an institutional framework for implementing protection measures. It provides for the constitution of a Witness Protection Authority to supervise and ensure uniform standards across states. Additionally, Witness Protection Cells are to be set up for processing applications and conducting threat assessments. The Bill also establishes a Witness Protection Fund to meet expenses related to security arrangements, relocation, change of identity, housing, and other protective measures. Witnesses may apply for protection directly or through the investigating agency or public prosecutor. The competent authority is empowered to conduct threat analysis and pass a reasoned order within a prescribed time frame, ensuring transparency and timely action.

The Bill enumerates various protection measures that may be granted depending upon the level of threat. These include concealment of identity, in-camera proceedings, use of pseudonyms, non-disclosure of personal details in official records, police protection, relocation to a safe place, and, in extreme cases, change of identity. It also permits recording of evidence through live link or video conferencing to minimize direct confrontation with the accused. Confidentiality of records is strictly maintained, and penalties are prescribed for unauthorized disclosure of a protected witness’s identity. The Bill further provides for periodic review of protection orders and allows withdrawal or termination if the threat no longer exists. Officials acting in good faith under the Bill are protected from legal liability, and the Central Government is empowered to frame rules for effective implementation.<sup>28</sup>

The major difference between the 2018 Scheme and the 2023 Bill lies in their legal status: the 2018 Scheme is an executive guideline approved by the Supreme Court, whereas the 2023 Bill

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<sup>28</sup> Aishwarya Vucha “The Shield of Themis: Witness Protection in India from Mahender Chawla to Section 398 Bns: A Comparative and Digital-Era Analysis” *International Journal of Law and Legal Research*, Vol. 7 (2024).

seeks to provide statutory backing with penal consequences and a structured institutional mechanism. If enacted, the Bill would strengthen accountability, ensure uniform implementation, and enhance witness confidence. However, due to legislative procedures, harmonization with new criminal laws, and financial considerations, the Bill remains pending. Its enactment would mark a significant step toward safeguarding witnesses and strengthening the administration of justice in India. At present, the Witness Protection Bill, 2023 has not yet been passed by Parliament and therefore is not in force. Witness protection in India continues to operate under the Witness Protection Scheme, 2018 and relevant provisions of the Bhartiya Nagarik Suraksha Sanhita, 2023.

## CONSTITUTIONAL PROVISIONS RELATED TO WITNESS PROTECTION IN INDIA

Witness protection in India is constitutionally grounded in the guarantees of life, liberty, equality, and fair trial. Although the Constitution does not expressly mention “witness protection,” judicial interpretation has firmly established that safeguarding witnesses is essential to preserving constitutional values.

### ARTICLE 21: RIGHT TO LIFE, PERSONAL LIBERTY, AND FAIR TRIAL

Article 21 guarantees that no person shall be deprived of life or personal liberty except according to procedure established by law.<sup>29</sup> The Supreme Court has consistently interpreted this Article expansively to include the right to live with dignity, safety, and free from fear. Witnesses who come forward to depose in criminal trials are entitled to protection of their life and liberty under this Article.

In *Maneka Gandhi v. Union of India*,<sup>30</sup> the Supreme Court held that the procedure under Article 21 must be “just, fair and reasonable,” thereby expanding the scope of personal liberty. This interpretation laid the foundation for recognizing the right to fair trial as part of Article 21.

The right to fair trial has since been recognized as an integral component of Article 21. In *Zahira Habibullah Sheikh v. State of Gujarat*,<sup>31</sup> the Supreme Court observed that a fair trial

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<sup>29</sup> The Constitution of India, art .21.

<sup>30</sup> *Maneka Gandhi v. Union of India* (1978) 1 SCC 248.

<sup>31</sup> *Zahira Habibullah Sheikh v. State of Gujarat* (2004) 4 SCC 158.

means a trial before an impartial judge, a fair prosecutor, and an atmosphere free from intimidation. The Court noted that when witnesses are threatened or coerced into turning hostile, it results in miscarriage of justice and violates Article 21.

Further strengthening this principle, in *Mahender Chawla v. Union of India*,<sup>32</sup> the Supreme Court formally approved the Witness Protection Scheme, 2018, holding that protection of witnesses is essential for ensuring a fair trial under Article 21. The Court directed that the Scheme would operate as law under Articles 141 and 142 until appropriate legislation is enacted. The judgment explicitly recognized that the right to fair trial and witness protection are inseparable.

#### **ARTICLE 14: EQUALITY BEFORE LAW**

Article 14 guarantees equality before the law and equal protection of the laws. Witnesses, irrespective of their background or social status, are entitled to equal protection against threats and intimidation.<sup>33</sup> Failure to protect vulnerable witnesses may result in discriminatory treatment and undermine equality. In *State of Gujarat v. Anirudh Singh*,<sup>34</sup> the Supreme Court emphasized that witnesses are the eyes and ears of justice and must be protected to ensure that the administration of justice functions effectively. Equal protection under Article 14 demands that all witnesses be able to testify without fear.

#### **ARTICLE 19(1)(A): FREEDOM OF SPEECH AND EXPRESSION**

Testifying in court is also an exercise of freedom of speech and expression under Article 19(1)(a). When witnesses are silenced through threats or coercion, their constitutional right to speak truthfully before a court is indirectly curtailed. Though reasonable restrictions may apply under Article 19(2), intimidation or violence cannot be justified.<sup>35</sup> In *Sahara India Real Estate Corp. Ltd. v. SEBI*,<sup>36</sup> while addressing media trials, the Court highlighted the importance of balancing free expression with fair trial rights, reinforcing that the integrity of judicial proceedings must be preserved.

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<sup>32</sup> *Mahender Chawla v. Union of India* (2019) 14 SCC 615.

<sup>33</sup> The Constitution of India, art .14.

<sup>34</sup> *State of Gujarat v. Anirudh Singh* (1997) 6 SCC 514.

<sup>35</sup> The Constitution of India, art .19.

<sup>36</sup> *Sahara India Real Estate Corp. Ltd. v. SEBI* (2012) 10 SCC 603.

## ARTICLE 20(3): PROTECTION AGAINST SELF-INCRIMINATION

Article 20(3) provides that no accused shall be compelled to be a witness against himself. While primarily a safeguard for the accused, it reinforces the constitutional principle that testimony must be voluntary and free from coercion.<sup>37</sup> In *Nandini Satpathy v. P.L. Dani*,<sup>38</sup> the Supreme Court held that no individual can be compelled to answer questions that may incriminate them, emphasizing voluntariness in statements made during investigation or trial. This principle indirectly supports witness protection by affirming that coercion is unconstitutional.

## JUDICIAL INTERPRETATION

It is the foremost function of the State and of the Court of law to conduct a free and fair trial and come to a final verdict after perusing all the records presented, in a fair manner. The Judge has a quintessential role to play in ensuring the same. The role of a Judge is to strike a fair balance between the rights of the accused as well as the victims. The aim of a criminal trial or the role of the prosecution is not to indict the accused but to ensure a fair procedure. In order to achieve the same, the Judge should see to it that the witnesses are not intimidated or influenced to manipulate their deposition before the court. Where the witnesses are pressurized, the trial is reduced to a mere travesty of the criminal justice system. The judiciary has time and again commented on the dire need and significance of witness protection in India.

The Hon'ble Supreme Court observed in *NHRC v. Gujarat*<sup>39</sup> that granting protection to witnesses is essential as in most of the sensational and controversial cases, trials do not begin until witnesses are won over. Criminals often have contact with the police and influential people causing distress and coercion to the witness into changing his/her statement before the court. With respect to the veracity of testimony by a hostile witness, in *Bhagwan Singh v. State of Haryana*,<sup>40</sup> the Supreme Court held that evidence of a hostile witness is no bar to conviction of an accused. In *State of U.P. v. Ramesh Prasad Misra*,<sup>41</sup> the Supreme Court opined that evidence of a such a witness must be scrutinized closely and will not be discarded totally whether in Favor of accused or prosecution. The testimony of such a witness should be

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<sup>37</sup> The Constitution of India, art .20(3).

<sup>38</sup> *Nandini Satpathy v. P.L. Dani* (1978) 2 SCC 424.

<sup>39</sup> *NHRC v. Gujarat* (2010) 15 SCC 22.

<sup>40</sup> *Bhagwan Singh v. State of Haryana* AIR 1976 SC 202.

<sup>41</sup> *State of U.P. v. Ramesh Prasad Misra* AIR 1996 SC 2766.

assessed in the same manner like that of any other witnesses.<sup>42</sup>

In *Swaran Singh v. State of Punjab*,<sup>43</sup> the Supreme Court emphasized on the pitiful condition of witnesses. The Apex Court stated that witnesses come from far off places to depose before the court only to see the matter adjourned multiple times. They are subjected to prolonged examinations, not given place to sit in the courtroom and harassed a lot throughout the trial. Alarmed by the rising cases of witnesses turning hostile, the Supreme Court in the Best Bakery case expressed concern that merely showing concern without taking any positive action amounts to betraying public trust in the system. With respect to measures for doing away with confrontation with the accused, in *Sakshi v. Union of India*,<sup>44</sup> use of trial cameras was suggested as a measure to offer protection to victims of sexual offences. In the historical case of *State of Maharashtra v. Praful Desai*,<sup>45</sup> the Supreme Court held that witness examination through video conferencing is valid in certain cases and the same falls under 'procedure established by law' under Article 21 of the Constitution. Where disclosure of the identity of the witness may be detrimental to public interest and aborts the very process of administration of justice, an effective hearing can be undertaken sans cross examination of the witness by the accused person.<sup>46</sup> Such a right is not fundamental to the accused.<sup>47</sup> These rulings will go a long way in protecting the rights of victims and witnesses.

In order for a trial to be fair, it must be conducted in harmony and unanimity. In *G.X. Francis v. Banke Bihari Singh*,<sup>48</sup> the Supreme Court opined that if reasonable grounds are made out, transfer of the case should be allowed so as not to undermine the public confidence in the fairness of the trial. A friendly ambience for fair and unprejudiced trial is quintessential.<sup>49</sup> Where the prosecution reasonably apprehends that the accused is tampering with the witnesses into changing their statement, the Court may, on such grounds, cancel the bail granted to the accused.<sup>50</sup>

Balancing the right of an accused to an open trial and the right of a witness to maintain

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<sup>42</sup> *Shyama v. State of Rajasthan*, 1977 WLN 278.

<sup>43</sup> *Swaran Singh v. State of Punjab* (2000) 5 SCC 68.

<sup>44</sup> *Sakshi v. Union of India* (2004) 5 SCC 518.

<sup>45</sup> *State of Maharashtra v. Praful Desai* 1852 (138) ER 1104.

<sup>46</sup> *A. K. Roy v. Union of India*, AIR 1982 SC 710.

<sup>47</sup> *Gurbachan Singh v. State of Bombay*, AIR 1952 SC 221

<sup>48</sup> *G.X. Francis v. Banke Bihari Singh* AIR 1958 SC 209.

<sup>49</sup> *Maneka Sanjay Gandhi v. Rani Jethmalani*, (1979) 4 SCC 167.

<sup>50</sup> *Gur Charan v. State*, AIR 1978 SC 179.

anonymity, the Supreme Court in *Naresh Shridhar Mirajkar. v. State of Maharashtra*<sup>51</sup> held that an order to prevent the publication of evidence given by a witness is valid provided it was passed with an aim to obtain true evidence in the matter and assist the administration of justice. Where the Court determines that circumstances are such that it becomes impossible for witnesses to depose fearlessly in an open trial due to apprehension of danger, a retrial may be allowed.<sup>52</sup> In cases where the threat to a witness persists even after the trial, owing to certain conditions, the authorities may extend the protection accordingly.<sup>53</sup> In a bid to prevent witnesses from turning hostile, the Delhi High Court set up certain guidelines to be made applicable in cases where the accused is punishable with death or life sentence, however not limited to them.<sup>54</sup> The need to establish a Competent Authority, factors to be considered while conferring protection and duties of the police are some of the aspects touched upon by the Court.

In *Waheed-Ur-Rehman Parra v. Union Territory of J&K*<sup>55</sup> case, the appellant challenged the trial court's order redacting the statements of five protected witnesses. The Supreme Court ruled that the right to fair trial and the right to witness protection must be balanced. It upheld the redaction, stating that the accused is entitled to the content of the allegation to prepare a defence, but not the identity or address of the witness. The Court held that redaction is "fair and reasonable" if it obscures only identifying particulars while disclosing the material facts

The Court clarified that the right to fair trial involves a balancing act: while the accused has a right to know the accusation, they do not have an absolute right to the unredacted identity of the accuser if it endangers life. The judgment distinguishes between "sealed cover" (total non-disclosure) and "reasoned redaction" (partial disclosure), favouring the latter as it preserves the defence's ability to prepare without exposing the witness.

The jurisprudence has further evolved with the recent ruling in *Mohammed Asaduddin v. Union of India*<sup>56</sup>. In this case, the Supreme Court struck down a "blanket order" by a Special Court that granted anonymity to 15 witnesses collectively. The Court held that Section 44 of UAPA requires an "individualized assessment" of the threat qua each witness. It clarified that

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<sup>51</sup> *Naresh Shridhar Mirajkar. v. State of Maharashtra* 1966 SCR (3) 744.

<sup>52</sup> *Sunil Kumar Pal v. Phota Sheikh*, AIR 1984 SC 1591.

<sup>53</sup> *Paramjit Kaur v. State of Punjab*, (2008) 152 PLR 185.

<sup>54</sup> *Neelam Katara v. Union of India*, ILR (2003) II Del 377.

<sup>55</sup> *Waheed-Ur-Rehman Parra v. Union Territory of J&K* (2022) SCC OnLine SC 237.

<sup>56</sup> *Mohammed Asarudeen v. Union of India* (2025) INSC 746.

while secrecy is permitted, it is an "exceptional deviation" from open justice principles and cannot be applied mechanically to a roster of witnesses without specific, recorded satisfaction of danger for each individual.

This judgment establishes a "twin-stage test" for courts:

1. Satisfaction of Threat: The court must first be satisfied, based on concrete material, that the specific witness faces a threat to life.
2. Scope of Protection: The court must then determine the minimum necessary protection (e.g., redaction vs. full anonymity) required to mitigate that specific threat, rather than issuing a blanket ban on disclosure.

## **CRITICAL ANALYSIS**

The Witness Protection Scheme, 2018, though a significant step in strengthening the criminal justice system, remains largely reactive rather than preventive in nature. Its protective measures are triggered only after a formal threat perception is assessed, instead of embedding automatic safeguards from the moment a witness becomes part of the criminal process. In reality, intimidation often begins subtly through social pressure, economic coercion, or community influence long before overt threats are reported. Many witnesses, particularly in cases involving sexual offences, caste-based violence, or influential accused persons, disengage or turn hostile even before protection mechanisms are activated. This delayed institutional response weakens the very objective of the Scheme, as it fails to address the early vulnerability phase where protection is most crucial. A preventive, rights-based model integrated into the investigative stage would better secure witness confidence and participation.

Another significant concern is the excessive reliance on police discretion in conducting threat assessments, classifying risk levels, and implementing protection measures. While the police play a central role in criminal investigations, concentrating protective authority in the same agency raises concerns about arbitrariness, bias, and potential conflict of interest. In cases involving powerful or politically connected accused individuals, witnesses may hesitate to rely on an institution that is also aligned with the prosecution. The absence of an independent oversight authority reduces transparency and accountability, thereby undermining public confidence. Moreover, systemic issues such as heavy workload, inadequate training in witness

sensitive procedures, and limited infrastructure further dilute the effectiveness of implementation. Without institutional independence and procedural clarity, the Scheme risks becoming administratively controlled rather than constitutionally guided.<sup>57</sup>

Finally, there exists a visible gap between the constitutional promise and administrative capacity. Rooted in Articles 14 and 21 of the Constitution, the Scheme seeks to protect the right to equality before law, the right to a fair trial, and the right to life and personal liberty. However, its implementation across States remains uneven due to insufficient funding, lack of dedicated witness protection units, and poor inter-state coordination. Protection measures are often temporary and subject to periodic review, whereas the threats faced by witnesses especially in organized crime or intra-family sexual abuse cases may be long-lasting or irreversible. Once trials conclude or protection is withdrawn, witnesses remain exposed without structured post-trial safeguards. This imbalance between the duration of risk and the duration of protection significantly reduces the Scheme's long-term effectiveness. Thus, while the normative foundation of witness protection in India is constitutionally sound, its practical realization depends upon stronger institutional mechanisms, financial commitment, and a shift toward preventive and sustained protection.

## **SUGGESTION AND REFORM MEASURES**

At present, India operates under the Witness Protection Scheme, 2018, and statutory recognition is also reflected under Section 398 of the *Bhartiya Nagarik Suraksha Sanhita, 2023* (BNSS), which contemplates protection of witnesses and encourages States to frame their own schemes. However, only a limited number of States have formulated independent mechanisms, resulting in uneven implementation. In light of the existing gaps, certain reforms become necessary.

First, there is an urgent need to transform the existing Scheme into a comprehensive Witness Protection Act enacted by Parliament. A statutory framework would provide greater clarity regarding the rights of witnesses, impose enforceable duties upon the State, and prescribe penal consequences for breach of protection measures. A shared funding model between the Centre and the States should be institutionalised, ensuring dedicated and non-discretionary financial

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<sup>57</sup> Geeta Devi Sharma & Dr. Kavya Chandel "Witness Protection In 2026: Assessing The "Ground Reality" Of the Witness Protection Scheme Under Section 398 Of the Bnss," *International Journal for Legal Research & Analysis of Commerce and Law*, Vol. 2 (2026).

allocation so that protection does not remain dependent on administrative convenience.<sup>58</sup>

Second, an Independent Witness Protection Authority should be established at both central and state levels. This authority must function separately from the investigating agency and prosecution to avoid conflict of interest. It should be entrusted with independent threat assessment, sanctioning of protective measures, supervision of relocation and rehabilitation, and periodic review of risk levels. Such institutional independence would enhance transparency and public confidence.

Third, protection in serious offences such as sexual offences, caste-based violence, terrorism, organised crime, and custodial violence should be automatic rather than application-based. Interim safeguards must operate from the investigative stage itself, shifting from a reactive to a rights-based preventive model. Protection measures should be reviewed periodically on the basis of continuing risk rather than the stage of trial.<sup>59</sup>

Finally, technological and infrastructural reforms must be strengthened. Uniform guidelines for video-conferencing testimony, dedicated vulnerable witness courtrooms, separate entry points, and psychological support services should be institutionalised across all districts. Only through statutory backing, institutional independence, preventive safeguards, and technological modernization can witness protection in India truly align with the constitutional mandate of fair trial and protection of life and personal liberty under Article 21.

## CONCLUSION

The administration of criminal justice fundamentally depends upon public faith in the system's fairness, impartiality, and effectiveness. The State bears a paramount duty to preserve this confidence by ensuring that judicial proceedings remain free from intimidation, coercion, and undue influence. A criminal trial is not merely a procedural formality; it is a solemn search for truth. For this search to be meaningful, the process must be fair to all stakeholders the accused, the victim, the witnesses, and society at large. The constitutional guarantee of life, personal liberty, and fair trial under Article 21 extends its protection to every participant in the justice

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<sup>58</sup> Ibid.

<sup>59</sup> *Aryan Thakur* "Witness Protection Scheme – Supreme Court's initiative to bring justice," available at <https://iisppr.org.in/witness-protection-scheme/> (last visited Feb 20, 2026).

system, including witnesses.

Witnesses form the backbone of criminal trials. Their testimony often determines whether justice is secured or defeated. However, in India, threats, inducements, and social pressures have frequently resulted in witnesses turning hostile. The misuse of money power, muscle power, and influence to manipulate testimony has become a serious concern. When a witness is silenced or compelled to depose falsely, the fairness of the trial is compromised, leading either to wrongful conviction or to the acquittal of the guilty. Protecting witnesses is therefore not merely procedural, it is a constitutional and moral necessity.

Recognizing this urgency, India has taken legislative and policy measures to institutionalize witness protection. The Witness Protection Scheme, 2018 introduced structured safeguards such as identity protection, relocation, and security arrangements based on threat assessment. The *Bhartiya Nyaya Sanhita*, 2023 under Section 398 further acknowledges the importance of protecting victims and witnesses within the new criminal law framework. Additionally, some states have adopted their own guidelines, and the Witness Protection Bill, 2023 remains under consideration to provide comprehensive statutory backing.

Despite these efforts, gaps remain in uniform implementation, funding, and long-term protective mechanisms. Strengthening witness protection is essential not only for individual safety but for preserving the credibility and integrity of the criminal justice system.

Ultimately, a justice system that cannot protect its witnesses cannot protect justice itself and safeguarding those who speak the truth is the first step toward ensuring that truth prevails in our courts.

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