
A STUDY ON IMPLEMENTING WITNESS PROTECTION SCHEME IN TAMIL NADU

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ABSTRACT

Witnesses occupy a fundamental position in the administration of criminal justice, as their testimony often provides the evidentiary foundation upon which criminal investigations and judicial determinations depend. However, threats, intimidation, coercion, inducement, and retaliation against witnesses can seriously undermine their ability to testify freely and truthfully. Witness protection is therefore essential not only for safeguarding the life, liberty, and dignity of witnesses but also for ensuring a fair trial and maintaining public confidence in the criminal justice system. In India, the need for a comprehensive mechanism for protecting witnesses was judicially recognised in *Mahender Chawla v. Union of India*, wherein the Supreme Court approved the Witness Protection Scheme, 2018. Subsequently, the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) introduced a statutory mandate under Section 398, requiring every State Government to prepare and notify a Witness Protection Scheme.

This research examines the implementation of the Witness Protection Scheme in Tamil Nadu within the framework of Section 398 of the BNSS. The study primarily focuses on the gap between the statutory framework and its practical implementation at the State level. It analyses the institutional and administrative mechanisms involved in identifying vulnerable witnesses, assessing threats, determining appropriate protection measures, and ensuring confidentiality and continued protection throughout criminal proceedings. Particular attention is given to the challenges faced by law-enforcement authorities, prosecution agencies, courts, and other stakeholders in effectively implementing witness protection measures.

The research adopts a doctrinal and analytical approach by examining the relevant statutory provisions, judicial decisions, the Witness Protection Scheme, 2018, governmental mechanisms, and existing legal literature concerning witness protection. The study further evaluates practical challenges such as inadequate awareness among witnesses, delays in threat assessment, lack of dedicated resources and infrastructure, financial constraints, inter-agency coordination, confidentiality risks, and difficulties in ensuring long-term protection. It also considers the challenges associated with protecting witnesses in serious and organised criminal cases, where the

possibility of intimidation and retaliation may be particularly significant.

The study seeks to establish that the effectiveness of Section 398 of the BNSS depends not merely upon the existence of a statutory mandate but upon the creation of an efficient, adequately funded, confidential, and accountable implementation mechanism in Tamil Nadu. The research ultimately proposes measures for strengthening institutional coordination, improving threat-assessment procedures, enhancing witness awareness, ensuring adequate financial and human resources, and developing effective monitoring mechanisms. It aims to contribute towards establishing a more reliable witness protection framework capable of enabling witnesses to participate in criminal proceedings without fear, thereby strengthening the credibility, fairness, and effectiveness of the criminal justice system in Tamil Nadu.

Keywords: Witness Protection, Section 398 BNSS, Witness Protection Scheme, Tamil Nadu, Criminal Justice System, Witness Intimidation, Fair Trial, Threat Assessment.

INTRODUCTION:

The administration of criminal justice is founded upon the ability of courts to ascertain the truth through credible and reliable evidence. Among all forms of evidence, the testimony of witnesses occupies a central position, as witnesses serve as the primary link between the commission of an offence and its judicial determination.

The statements of witnesses often form the basis for investigation, prosecution, and conviction. However, the effectiveness of the criminal justice system is significantly undermined when witnesses are subjected to intimidation, coercion, threats, or inducements, compelling them to retract or alter their testimony. Such practices had not only impeded the fair administration of justice but also weaken the public confidence in the rule of law. Consequently, ensuring the safety and security of witnesses has become an indispensable component of a fair, effective, and transparent criminal justice system.

A witness protection scheme is a legal and institutional mechanism designed to safeguard witnesses whose lives, liberty, or property are endangered on account of their participation in criminal proceedings. The scheme seeks to eliminate fear and undue influence by providing appropriate protective measures such as identity protection, relocation, police security, in-camera proceedings, concealment of personal information, and other measures proportionate to the level of threat faced by the witness.

In India, the absence of a comprehensive statutory framework for witness protection remained a major concern for several decades. Recognising this lacuna, the Supreme Court approved the Witness Protection Scheme, 2018, in *Mahender Chawla v. Union of India*¹, declaring it enforceable throughout the country until suitable legislation was enacted. The enactment of the **Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)**,² marks a significant legislative advancement by expressly incorporating witness protection under Section 398. This provision mandates every State Government to prepare and notify a Witness Protection Scheme with the objective of ensuring the safety of witnesses and enabling them to participate in criminal proceedings without fear of intimidation or retaliation.

In Tamil Nadu, the practical execution of the witness protection framework presents several legal, administrative, financial, and institutional challenges. Against this backdrop, the present study examines the implementation of the Witness Protection Scheme in Tamil Nadu under Section 398 of the BNSS. It seeks to analyse the existing legal framework, evaluate the institutional mechanisms established for witness protection, identify the practical challenges encountered in implementing the scheme, and assess their impact on the administration of criminal justice.

SCOPE OF THE RESEARCH:

The present research focuses on the implementation of the Witness Protection Scheme in Tamil Nadu in accordance with Section 398 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS). The study seeks to examine the legal, institutional, and practical framework governing the protection of witnesses and extends to an examination of the statutory framework under Section 398 of the BNSS, the Witness Protection Scheme, 2018, and relevant judicial decisions that have contributed to the development of witness protection in India.

A significant aspect of the study is to identify the practical challenges affecting implementation in Tamil Nadu. These include delays in threat assessment, inadequate financial and human resources, lack of awareness among witnesses, confidentiality concerns, difficulties in relocation and identity protection, inadequate coordination between authorities, and the absence of effective monitoring mechanisms.

¹ (2019) 14 SCC 615

² Act 46 of 2023

The research is therefore not confined to analysing the legal provisions in isolation but seeks to evaluate the gap between the law and its practical implementation. It aims to identify deficiencies in the existing framework and suggest appropriate legal, administrative, and institutional measures to strengthen witness protection in Tamil Nadu and thereby promote a fair, credible, and effective criminal justice system.

RESEARCH METHODOLOGY:

The present study adopts a **doctrinal research methodology** to examine the implementation of the Witness Protection Scheme in Tamil Nadu under Section 398 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS). The research is primarily based on the systematic study, interpretation, and analysis of existing legal materials relating to witness protection in India, with particular emphasis on the legal and institutional framework applicable in Tamil Nadu.

The study relies predominantly on **primary sources of law**, including the Bharatiya Nagarik Suraksha Sanhita, 2023, the Witness Protection Scheme, 2018, relevant provisions of the Constitution of India, and judicial decisions of the Supreme Court of India and the High Court of Madras concerning witness protection, fair trial, witness intimidation, and the protection of vulnerable witnesses. The landmark decision in *Mahender Chawla v. Union of India*, wherein the Supreme Court approved the Witness Protection Scheme, 2018, is examined as an important foundation for understanding the evolution of witness protection in India.

The research also makes use of **secondary sources**, including books, legal commentaries, research articles, law journals, reports of governmental and expert bodies, legal databases, and other scholarly literature relating to witness protection and criminal justice administration. These materials are analysed to understand the existing challenges and identify gaps between the legal framework and its practical implementation of witness protection scheme in Tamil Nadu.

REVIEW OF LITERATURE:

Law Commission of India, 198th Report – *Witness Identity Protection and Witness Protection Programmes* (2006):

The 198th Report of the Law Commission of India is one of the foundational works on witness protection in India. It examined the increasing problem of witness intimidation and the need to

protect the identity and safety of witnesses participating in criminal proceedings. The Report proposed a structured witness protection programme and recognised that witnesses require protection from threats, intimidation, and retaliation. It provides the conceptual and policy foundation for subsequent developments in Indian witness protection law.

Mahender Chawla v. Union of India (2018):

The decision in *Mahender Chawla v. Union of India* represents a significant development in the legal recognition of witness protection in India. The Supreme Court approved the Witness Protection Scheme, 2018 and directed its implementation throughout the country until appropriate legislation was enacted. The Scheme introduced mechanisms such as threat categorisation, protection measures, identity protection, relocation and financial assistance. The judgment establishes that witnesses must be able to assist law-enforcement authorities and courts without fear of intimidation or reprisal.

Witness Protection Scheme, 2018:

The Witness Protection Scheme, 2018 provides the operational framework for protecting threatened witnesses. It establishes different categories of threat and prescribes corresponding protection measures. The literature surrounding the Scheme generally focuses on its significance in reducing witness hostility and strengthening the criminal justice process. However, critical literature also identifies limitations concerning resources, institutional capacity, implementation and monitoring. These issues are particularly relevant to assessing how effectively the Scheme can operate within individual States.

Efficacy of the Witness Protection Scheme, by Dhiraj Mishra and Anamika Kumari:

Recent scholarship has examined the Scheme from the perspective of its effectiveness within the Indian criminal justice system. Kumari and Mishra's 2026 study critically analyses the objectives, legal foundations, operational mechanisms and limitations of the Witness Protection Scheme, 2018, while connecting witness protection with constitutional guarantees and international best practices.

EVOLUTION OF WITNESS PROTECTION LAW IN INDIA:

The protection of witnesses has emerged as an important component of the Indian criminal

justice system because the administration of justice substantially depends upon the ability of witnesses to give evidence freely and truthfully. For a considerable period, Indian criminal procedure did not contain a comprehensive statutory framework specifically dealing with the protection of witnesses from threats, intimidation or retaliation.

The development of witness protection law in India has therefore been gradual and has largely taken place through judicial intervention, recommendations of the Law Commission of India, administrative measures and, ultimately, statutory recognition under the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS).

The early development of the concept may be traced to the constitutional requirement of a **fair trial**. The Supreme Court has repeatedly emphasised that a criminal trial must provide a genuine opportunity for the prosecution, accused and witnesses to participate in the judicial process.

In *Zahira Habibullah Sheikh v. State of Gujarat*,³ the Supreme Court dealt extensively with the consequences of intimidation and interference with witnesses. The case demonstrated how threats, inducements and external influences could undermine the integrity of a criminal trial and result in the failure of justice. The Court recognised that a fair trial is not merely a procedural formality but an essential requirement of the criminal justice system.

The need for specific institutional protection became more prominent with the **Law Commission of India's 198th Report, titled "Witness Identity Protection and Witness Protection Programmes," submitted in 2006**. The Report constituted an important step towards developing a structured legal framework for witness protection in India. The Law Commission examined the difficulties faced by witnesses whose evidence placed them at risk of physical harm, intimidation or other forms of retaliation. It particularly considered the protection of the identity of witnesses and recommended the development of a formal witness protection programme. The Report is significant because it shifted the discussion from the general obligation of the State to protect citizens towards the creation of specific mechanisms directed at witnesses participating in criminal proceedings. The Law Commission's 198th Report continues to be an important reference point in tracing the legislative history of witness protection in India.

³ (2004) 4 SCC 158

Judicial decisions during this period also contributed to the development of protective measures for vulnerable witnesses. In *Sakshi v. Union of India*,⁴ the Supreme Court recognised the need for measures that would enable vulnerable witnesses, particularly victims of sexual offences and child witnesses, to give evidence without being subjected to unnecessary trauma.

The Court issued directions concerning the manner in which evidence could be recorded in sensitive cases. Later, in *Smruti Tukaram Badade v. State of Maharashtra*,⁵ the Supreme Court referred to the continuing importance of creating safe and barrier-free environments for vulnerable witnesses and traced the development of such measures to earlier decisions.

Despite these judicial developments and the recommendations of the Law Commission, India continued to lack a comprehensive statutory witness protection framework. The absence of uniform procedures created difficulties in determining the nature of protection to be provided, the authority responsible for granting such protection, the criteria for assessing threats and the financial responsibility involved. The need for a uniform national mechanism consequently became increasingly apparent.

A major development occurred with the formulation of the **Witness Protection Scheme, 2018** by the Ministry of Home Affairs. The Scheme represented an attempt to provide a systematic framework for identifying and protecting threatened witnesses. It introduced concepts such as threat perception assessment, categorisation of threats, protection measures, identity protection and the establishment of a competent authority at the district level. The Scheme contemplated a Standing Committee headed by the District and Sessions Judge, with senior police and prosecution officials forming part of the institutional structure. It also provided for a Threat Analysis Report to assess the seriousness and credibility of threats faced by witnesses or their family members.

The legal significance of the 2018 Scheme was firmly established by the Supreme Court in *Mahender Chawla v. Union of India*.⁶ On 5 December 2018, the Supreme Court approved the Witness Protection Scheme, 2018 and directed the Union of India, the States and Union Territories to enforce it. The Court further held that the Scheme would operate as law under Articles 141 and 142 of the Constitution until suitable legislation was enacted on the subject.

⁴ (2004) 5 SCC 518

⁵ 2022 SCC 39.

⁶ (2019) 14 SCC 615

The Court's intervention was particularly significant because it transformed witness protection from a policy objective into an enforceable judicial framework applicable throughout India.

The decision in *Mahender Chawla* also recognised the constitutional responsibility of the State towards witnesses. The Supreme Court observed that the State has a definite role in protecting witnesses, particularly in sensitive cases involving persons capable of exercising political, financial or physical influence. The Court connected witness protection with the State's obligation to protect life and liberty and with the proper functioning of the rule of law.

Subsequent judicial developments demonstrated that the effectiveness of the Scheme depended upon its actual implementation. In later proceedings, the Supreme Court reiterated the importance of enforcing the Witness Protection Scheme and recognised that failure to protect material witnesses could directly affect the fairness and outcome of criminal trials.

In one such judgment, the Court observed that effective implementation of the Scheme, including relocation and escorting witnesses to court, could enable witnesses to depose freely and prevent them from turning hostile because of external pressure.

The next significant stage in the evolution of witness protection was its incorporation into legislation through the **Bharatiya Nagarik Suraksha Sanhita, 2023**⁷. The BNSS replaced the Code of Criminal Procedure, 1973 as part of India's comprehensive reform of criminal laws and came into force on 1 July 2024. Importantly, **Section 398 of the BNSS expressly deals with the "Witness protection scheme."** The statutory provision requires every State Government to prepare and notify a Witness Protection Scheme for the State. This represents an important transition from a witness protection mechanism developed primarily through judicial directions to an express statutory responsibility imposed upon State Governments.

The enactment of Section 398 is particularly significant for the present study because it places the responsibility for developing and implementing witness protection within the State-level legal and administrative framework. Consequently, the effectiveness of witness protection in Tamil Nadu cannot be assessed solely by examining the existence of the statutory provision. It requires an examination of the mechanisms through which protection is actually provided, including threat assessment, decision-making by competent authorities, police protection,

⁷ Act 46 of 2023

confidentiality, relocation, financial assistance and monitoring of protection measures.

Thus, the evolution of witness protection law in India may broadly be understood as a movement **from the absence of a dedicated statutory framework, to judicial recognition of the right of witnesses to participate fearlessly in a fair trial, followed by the Law Commission's recommendations, the Witness Protection Scheme, 2018, judicial enforcement of that Scheme, and finally statutory recognition under Section 398 of the BNSS.** The present legal position therefore provides a stronger foundation for witness protection than existed previously. However, statutory recognition by itself does not guarantee effective protection. The principal challenge now lies in translating the legal mandate into an effective administrative and institutional mechanism at the State level.

For Tamil Nadu, this makes the study of implementation particularly significant, especially in relation to institutional coordination, financial and infrastructural resources, threat assessment, confidentiality, awareness and continuous monitoring of protection measures. The evolution of the law therefore provides the necessary background for examining whether the objectives underlying Section 398 of the BNSS can be effectively realised in practice in Tamil Nadu.

NEED FOR WITNESS PROTECTION SCHEME IN TAMIL NADU:

The effectiveness of the criminal justice system depends substantially upon the ability of witnesses to participate in investigation and trial without fear, coercion or undue influence. A witness may possess the most relevant evidence concerning the commission of an offence, yet the evidentiary value of such testimony is seriously compromised when the witness is threatened, induced, intimidated or compelled to withdraw from the proceedings. The Supreme Court, while approving the Witness Protection Scheme, 2018 in *Mahender Chawla v. Union of India*⁸ recognised that witness protection is particularly important in cases involving organised crime, extremism and other situations where accused persons possess the capacity to intimidate witnesses. In Tamil Nadu, the necessity for an effective witness protection mechanism is particularly significant in view of cases involving caste violence, honour killings, political rivalry, organised criminal activity, sexual offences against children and narcotics-related offences.

The existing criminal justice system in Tamil Nadu provides several isolated safeguards for

⁸ (2019) 14 SCC 615

victims and witnesses, but these mechanisms have not historically operated as a comprehensive and uniform system of protection. The Witness Protection Scheme, 2018 introduced mechanisms including threat assessment, categorisation of witnesses according to the level of threat, police protection, identity protection, relocation and other protective measures. The Supreme Court directed its implementation throughout India in *Mahender Chawla*.

The introduction of **Section 398 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)**, requiring every State Government to prepare and notify a Witness Protection Scheme, has consequently made implementation a direct statutory responsibility. The central issue for Tamil Nadu is therefore not merely the existence of legal protection, but the adequacy of institutional mechanisms for delivering such protection.

Witness Hostility

Witness hostility represents one of the most serious obstacles to criminal prosecution. Witnesses may resile from their earlier statements because of threats, inducement, monetary considerations, family pressure, political influence or fear of retaliation. The Madras High Court in *Radha @ Radhakrishnan v. State of Tamil Nadu* recognised intimidation, political pressure, family pressure, monetary considerations and prolonged trials among the factors contributing to witnesses turning hostile. The Court emphasised that witness hostility can weaken prosecution cases and undermine public confidence in criminal justice.

The problem is particularly important because witness protection cannot be restricted to physical security alone. The recent Supreme Court decision in *K.P. Tamilmaran v. State*⁹ is particularly relevant to Tamil Nadu. The case arose from the 2003 Kannagi–Murugesan honour killing, and the Court held that evidence of a hostile witness is not automatically rendered worthless and may be relied upon to the extent it is corroborated by reliable material.

Organised Crime

Organised criminal groups create a particularly serious need for witness protection because their influence may extend beyond the immediate commission of an offence. Witnesses may face threats not only during investigation but throughout the trial and even after the conclusion of proceedings. The Supreme Court, in *Mahender Chawla*, specifically recognised that

⁹ 2025 INSC 576

organised crime may require extraordinary protection measures, including relocation and other measures beyond ordinary police escort.

Tamil Nadu's criminal justice system therefore requires a protection mechanism capable of responding to witnesses who may be vulnerable to retaliation from criminal networks. A system limited to ordinary police protection may be inadequate where the accused or associated persons possess substantial financial or organisational resources.

Honour Killing Cases

Honour killings provide one of the strongest grounds for a State-specific witness protection mechanism in Tamil Nadu. Such cases frequently involve family members, relatives or community groups, creating a situation where witnesses may themselves belong to the social environment of the accused. Consequently, witnesses may face pressure to compromise, withdraw their statements or refuse to cooperate with the prosecution.

In *Arumugam Servai v. State of Tamil Nadu*¹⁰ the Supreme Court strongly condemned caste-based violence and directed State authorities to take preventive and disciplinary measures. The Madras High Court's decision in *B. Dilipkumar v. Secretary to Government*¹¹ is particularly significant for Tamil Nadu. The case concerned the death of Vimaladevi following an inter-caste marriage. The Court directed the creation of special cells in every district, a 24-hour helpline, police protection and funds for temporary shelter and rehabilitation of threatened couples. These directions demonstrate that witness and victim protection in honour-killing cases requires coordinated institutional intervention rather than protection being provided only after a threat becomes imminent.

Political Violence:

Political rivalry can create circumstances in which witnesses are exposed to pressure because of the political or economic influence of the accused. Witnesses may fear loss of employment, social retaliation, physical violence or repeated harassment. The Madras High Court in *C. Ve. Shanmugam v. The Chief Secretary*¹², dealt with security threats arising in the context of political enmity and recognised the role of threat assessment by the Security Review

¹⁰ (2011) 6 SCC 405

¹¹ W.P. No. 26991 of 2014

¹² W.P. No. 6632 of 2022

Committee. The case illustrates the importance of objective and periodic assessment of threats rather than treating police protection as a permanent or discretionary privilege.

Caste based Violence:

Caste-based violence creates distinctive difficulties for witnesses because the accused and witnesses may belong to competing or socially dominant groups within the same locality. Witnesses may therefore be exposed to community pressure, social boycott and physical intimidation. The Supreme Court's decision in *Arumugam Servai* remains a significant Tamil Nadu authority, particularly because it recognised the State's responsibility to prevent caste-related violence and directed disciplinary action against officials who fail to take preventive measures.

The need for continuing protection is also reflected in recent proceedings before the Madras High Court. In *Jebasingh Kanagaraj v. Deputy Superintendent of Police*,¹³ the Court emphasised the statutory protection available to victims and witnesses under Section 15-A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act and observed that fair trial includes the right of victims and witnesses to depose without intimidation or coercion.

POCSO Cases:

Cases under the Protection of Children from Sexual Offences Act, 2012 require particularly stringent witness protection because the victim is ordinarily a child and may be vulnerable to intimidation, social stigma and psychological trauma. Protection in such cases must include confidentiality of identity, protection from repeated exposure to the accused, child-friendly deposition procedures and prevention of disclosure of personal information.

In *R. Varalakshmi v. Government of Tamil Nadu*¹⁴, the Madras High Court dealt with the disclosure of the identity and sensitive details of a sexual-assault victim in the Anna University case. The Court emphasised the victim's constitutional rights to privacy and dignity and reiterated that information capable of identifying victims of sexual offences and POCSO offences must not be placed in the public domain. The Court also observed the continuing need

¹³ CrI.O.P.(MD) Nos. 18242 of 2023

¹⁴ W.P. Nos. 39893 & 39895 of 2024

for adequate witness protection. The case demonstrates that witness protection must encompass **information security and identity protection**, not merely physical security.

NDPS Cases:

Witness protection is equally significant in prosecutions under the Narcotic Drugs and Psychotropic Substances Act, 1985. In *R. Paulsamy v. Superintendent, Narcotics Control Bureau, Chennai*, the Madras High Court recognised the problem of witnesses turning hostile because of fear created by persons involved in smuggling activities and discussed the legislative purpose behind Section 53A of the NDPS Act. Similarly, in *Sugumar v. Inspector of Police*, the Madras High Court observed that members of the public may hesitate to act as independent witnesses because of the time involved in court proceedings and apprehension of threats from persons facing criminal prosecution.

LEGAL CHALLENGES IN IMPLEMENTING WITNESS PROTECTION SCHEME:

1. Absence of a comprehensive State-level statutory framework

One of the principal legal challenges is translating the broad mandate of Section 398 BNSS into a detailed and operational State-level framework. Section 398 merely provides that every State Government shall prepare and notify a Witness Protection Scheme. The provision does not itself prescribe the detailed institutional structure, procedure for threat assessment, standards for granting protection, duration of protection, funding mechanism or monitoring system.

The Witness Protection Scheme, 2018 therefore continues to provide important guidance. It contemplated a **Competent Authority at the district level**, chaired by the District and Sessions Judge, with the head of police and prosecution forming part of the institutional structure. The challenge for Tamil Nadu is to ensure that these mechanisms are effectively integrated with the statutory framework created by Section 398.

The problem is not merely theoretical. In 2021, the Madurai Bench of the Madras High Court sought a report regarding whether the Witness Protection Scheme had been properly implemented in Tamil Nadu, including whether Standing Committees, Witness Protection Cells, Witness Protection Funds and vulnerable-witness courtrooms had been established in every district. This demonstrates the continuing gap between the formal recognition of witness

protection and its practical institutionalisation.

2. Lack of clarity regarding institutional responsibility

Effective witness protection requires coordination between the **judiciary, police, prosecution, District Legal Services Authorities and district administration**. Fragmentation of responsibility can result in delays in threat assessment and implementation of protective measures.

A recent Madras High Court decision, *Sangeetha v. Superintendent of Police*¹⁵ illustrates the continuing relevance of institutional mechanisms. The Court held that the petitioner, being a victim and witness in an earlier case, was entitled to the benefit of the Witness Protection Scheme and permitted her to approach the District Legal Services Authority for assistance. The decision indicates the importance of ensuring that witnesses know which authority they should approach and that the relevant authorities act promptly once a threat is brought to their attention.

3. Threat assessment and police discretion

The 2018 Scheme adopts a **threat-based approach**, meaning that the nature and extent of protection depend upon the vulnerability and threat perception of the witness. While this approach is necessary to prevent arbitrary allocation of protection, excessive reliance upon police assessment may create difficulties where the accused has influence over local law-enforcement structures.

Threats may also be indirect. A witness may face social pressure, economic consequences, employment-related retaliation or threats to family members without receiving an explicit physical threat. Therefore, a narrow interpretation of “threat” may leave vulnerable witnesses without adequate protection.

The Madras High Court has recognised the practical importance of such protection. In *M. Selvi v. Superintendent of Police*,¹⁶ the Court directed round-the-clock police protection where the petitioners were found to fall within the category of vulnerable witnesses and observed that

¹⁵ CrI.O.P.(MD) No. 4450 of 2025

¹⁶ CrI.O.P.(MD) No. 19818 of 2023,

protection of witnesses must be balanced with the human rights of the accused.

4. Financial and infrastructural constraints

Witness protection can involve substantial expenditure. Physical security, relocation, temporary accommodation, change of identity where legally permissible, transportation, communication security and protection of family members may require sustained financial resources.

The 2018 Scheme contemplated a **Witness Protection Fund**, while also requiring the establishment of protection mechanisms at the district level. The challenge for Tamil Nadu is ensuring that adequate and continuously available financial resources are allocated for these purposes rather than treating witness protection as an incidental police expenditure.

Infrastructure is another concern. Vulnerable witnesses may require separate waiting areas, secure routes, video-conferencing facilities and deposition environments that minimise contact with the accused. The Supreme Court had directed the establishment of vulnerable witness deposition complexes in district courts. Failure to provide such infrastructure may undermine the effectiveness of witness protection even where physical police security is available.

5. Political influence and interference

The political dimension presents a particularly sensitive challenge. Criminal cases involving politically influential persons may involve witnesses who are vulnerable to political pressure, inducement, intimidation or social consequences. Witnesses may fear that cooperation with the prosecution could affect their employment, livelihood, social position or personal security.

Political influence may also create difficulties in maintaining institutional independence. A witness protection mechanism must therefore operate on objective criteria rather than political considerations. The decision to grant or withdraw protection should be based upon an independent assessment of vulnerability and threat, preferably subject to judicial oversight.

The Supreme Court's approach in *Mahender Chawla* is important in this regard because it emphasised that witness protection must be determined according to the **vulnerability and threat perception of the individual witness**. This principle should prevent political considerations from determining access to protection.

6. Conflict between witness protection and the rights of the accused

Witness protection cannot be implemented at the expense of the fundamental principles of a fair trial. Concealment of identity, restricted disclosure of personal information and protective methods of recording evidence must be balanced against the accused's right to confront and cross-examine witnesses.

The challenge is therefore to design measures that protect witnesses while preserving the accused's constitutional and procedural safeguards. The Madras High Court has specifically recognised this balance, observing that protection of witnesses is as important as protection of the human rights of the accused.

7. Confidentiality and information security

Modern criminal proceedings generate extensive electronic records. FIRs, charge sheets, court records, digital communications and social media can potentially expose the identity or location of protected witnesses. Consequently, confidentiality cannot be limited to physical records maintained by the police.

Particular difficulty arises where the accused or persons associated with them have access to local information networks. Any disclosure of the witness's residential address, telephone number, workplace or relocation details can compromise an otherwise effective protection programme. Tamil Nadu therefore requires strong protocols governing access to sensitive witness information.

8. Administrative delay and judicial intervention

Another challenge is the possibility that witnesses may receive protection only after approaching the courts. A protection system that requires repeated litigation defeats the purpose of preventive protection.

The 2021 proceedings before the Madurai Bench, where the Court sought information regarding implementation of the Scheme after allegations that police protection granted to witnesses was not subsequently continued, demonstrate the importance of continuous monitoring. More recently, the Madras High Court has continued to deal with applications invoking the Witness Protection Scheme, demonstrating that judicial intervention remains relevant where administrative protection is inadequate.

9. Absence of effective monitoring and accountability

Witness protection is not a one-time measure. The level of threat may increase or decrease as investigation and trial progress. Therefore, periodic review is essential. Protection should be capable of being increased, modified or withdrawn based on an objective reassessment.

A major implementation challenge is determining **who monitors the performance of protection authorities**. Complaints regarding failure to provide protection, delay in responding to threats or unauthorised disclosure of confidential information require an independent mechanism of accountability.

RECOMMENDATIONS FOR EFFECTIVE IMPLEMENTATION OF THE WITNESS PROTECTION SCHEME IN TAMIL NADU

The enactment of **Section 398 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)** marks an important development in Indian criminal procedure. The provision expressly requires every State Government to prepare and notify a Witness Protection Scheme with the objective of ensuring the protection of witnesses. However, the effectiveness of the statutory provision depends upon the creation of a practical, adequately funded and accountable mechanism at the State level. Based on the doctrinal analysis undertaken in this research, the following recommendations may be considered for strengthening the implementation of witness protection in Tamil Nadu.

1. Formulation of a comprehensive Tamil Nadu Witness Protection Scheme

Tamil Nadu should ensure that a detailed and comprehensive State-specific Witness Protection Scheme is framed and notified under Section 398 BNSS. The Scheme should clearly prescribe the procedure for applying for protection, threat assessment, categorisation of witnesses, protective measures, duration of protection, review mechanisms, confidentiality requirements and remedies against refusal or withdrawal of protection. The Scheme should incorporate the safeguards and institutional mechanisms developed under the Witness Protection Scheme, 2018 while adapting them to the specific administrative and social conditions of Tamil Nadu.

2. Establishment of an independent State Witness Protection Authority

A dedicated **State Witness Protection Authority** should be constituted to supervise and coordinate implementation throughout Tamil Nadu. The Authority should function

independently from routine police administration and should include representatives from the judiciary, police, prosecution, legal services authorities and other relevant departments.

At the district level, dedicated Witness Protection Committees should function as the primary authorities for receiving applications, assessing threats and implementing protection orders. This would prevent witness protection from becoming dependent solely upon the discretion of the local police.

3. Strengthening the threat assessment mechanism

Threat assessment should be **objective, standardised and time bound**. A witness should not be required to establish an immediate physical threat before protection is granted. Factors such as the nature of the offence, influence of the accused, previous acts of intimidation, vulnerability of the witness, social circumstances, economic dependence and threats against family members should be considered.

A preliminary threat assessment should preferably be completed within a fixed period, such as **48 or 72 hours in urgent cases**, with immediate interim protection available where necessary. The 2018 Scheme's threat-based approach should form the foundation of this mechanism. The Supreme Court has stressed that protection is essential where witness vulnerability and external influence may affect the integrity of criminal trials.

4. Creation of a dedicated Witness Protection Fund

Tamil Nadu should establish a **permanent and adequately funded Witness Protection Fund**. Protection should not be denied or delayed because of the absence of immediate financial resources. The Fund should cover expenses relating to:

- police protection;
- temporary accommodation;
- relocation;
- transportation;
- emergency financial assistance;
- identity-related protective measures;

- technological and communication security; and
- other reasonable expenses arising from the protection programme.

Annual budgetary allocation should be made specifically for witness protection rather than treating such expenditure as an ordinary police expense.

5. Provision for emergency and interim protection

A major weakness in any witness protection system would be the delay between reporting a threat and receiving protection. Tamil Nadu should therefore establish an **emergency protection mechanism** under which the police can provide immediate temporary protection pending a formal decision by the competent authority.

This is particularly important in cases involving honour killings, organised crime, caste-based violence, political violence and serious sexual offences, where retaliation may occur immediately after registration of the case or disclosure of information.

6. Strengthening identity and confidentiality protection

Witness protection should extend beyond physical security. The personal details of protected witnesses, including residential addresses, telephone numbers, workplace details and relocation information, should be classified as **confidential information**.

Access to such information should be restricted to authorised officers and judicial authorities. Digital case-management systems should incorporate appropriate access controls so that sensitive witness information cannot be casually accessed or disclosed. This is especially important in POCSO and sexual-offence cases, where the privacy and dignity of victims and witnesses require heightened protection.

7. Establishment of Vulnerable Witness Deposition Centres

Tamil Nadu should ensure the establishment and effective functioning of **Vulnerable Witness Deposition Centres (VWDCs)** in all districts. These facilities should enable vulnerable witnesses to give evidence without unnecessary physical or visual contact with the accused. Facilities should include:

- separate waiting areas;

- secure entry and exit routes;
- video-conferencing facilities;
- child-friendly infrastructure;
- screens or other protective arrangements where legally appropriate; and
- trained support personnel.

The Supreme Court has recognised the importance of such mechanisms in enabling vulnerable witnesses to depose freely and without intimidation.

8. Special protection for high-risk categories

The Tamil Nadu scheme should expressly identify cases requiring enhanced protection, including; organised crime, honour killings, caste-based violence, political violence, POCSO offences, offences against women, NDPS offences, cases involving public servants or politically influential accused persons, and cases involving threats to multiple witnesses. Protection should be based on the actual threat rather than merely the category of offence, but these categories should trigger heightened scrutiny during threat assessment.

9. Protection of witnesses from intimidation during trial

Protection should continue throughout the **investigation, trial, appeal and, where necessary, post-trial period**. The Supreme Court has recognised that witnesses may be prevented from giving truthful evidence when they remain exposed to threats during the proceedings. In *Mahender Chawla* and subsequent cases, the Court emphasised strict implementation of the Witness Protection Scheme. The protection authority should therefore periodically reassess the threat instead of automatically terminating protection after the witness's examination-in-chief or cross-examination.

10. Strengthening coordination between institutions

Effective implementation requires coordination between the **Police Department, Public Prosecutors, Judiciary, District Legal Services Authorities, Prisons Department and District Administration**. A standard operating procedure should specify the responsibility of each institution. For example, the investigating officer should report threats immediately; the prosecution should inform the competent authority of relevant developments; the police should

execute protection orders; and the competent authority should periodically review the protection provided.

11. Judicial oversight and periodic review

The judiciary should have an effective supervisory role in ensuring that protection orders are implemented. Courts should have the power to direct immediate protection where circumstances warrant it, particularly where a witness reports intimidation during pending proceedings. Periodic review should determine whether protection should be **continued, modified, enhanced or withdrawn**. The review should be based on the current threat rather than the original assessment.

12. Protection against political interference

Witness protection authorities must function independently of political influence. Protection should be granted according to **objective threat assessment and statutory criteria**, irrespective of the political, social or economic status of the accused.

This is particularly important in cases involving political violence or influential persons. The Supreme Court has recognised the vulnerability of witnesses where accused persons possess substantial influence and had emphasised the necessity of witness protection in such circumstances.

13. Training of police officers and judicial personnel

Specialised training programmes should be introduced for police officers, prosecutors, judicial officers and other personnel dealing with protected witnesses. Training should cover:

- identification of vulnerable witnesses;
- threat assessment;
- confidentiality;
- dealing with child witnesses;
- psychological sensitivity;
- digital security;

- relocation procedures; and
- documentation of threats and protection measures.

A protection scheme can be effective only when the personnel implementing it understand the purpose and procedures of the scheme.

14. Legal aid and counselling for protected witnesses

Witnesses should have access to **free legal assistance and counselling**, particularly where they face economic or social pressure. District Legal Services Authorities can play an important role in providing legal guidance and assisting witnesses in approaching competent authorities. Witness protection should consequently be viewed as a broader support mechanism rather than merely the provision of police guards.

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