
THE SHIELD OF THEMIS: WITNESS PROTECTION IN INDIA FROM MAHENDER CHAWLA TO SECTION 398 BNSS: A COMPARATIVE AND DIGITAL-ERA ANALYSIS

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ABSTRACT

The adversarial criminal justice system is predicated on the sanctity of oral testimony, yet in the Indian context, this foundation has been systematically eroded by a pervasive culture of witness intimidation, leading to a crisis of "hostile witnesses" and plummeting conviction rates in heinous crimes. This research report provides an exhaustive, critical examination of the legal, institutional, and technological architecture of witness protection in India. Tracing the trajectory from the Supreme Court's judicial legislation in *Mahender Chawla v. Union of India* (2018) to the newly enacted statutory mandate under Section 398 of the *Bharatiya Nagarik Suraksha Sanhita* (BNSS), 2023, the study evaluates the efficacy of India's tiered protection model. It specifically scrutinizes the jurisprudential tension between the rights of the accused to a fair trial and the witness's right to life, analyzing the "sealed cover" and "redaction" doctrines evolved in landmark counter-terrorism rulings such as *Waheed-ur-Rehman Parra* (2022) and *Mohammed Asarudeen* (2025). Furthermore, the paper identifies a critical "digital blindspot" in the current framework: the incompatibility of "identity change" (Category A protection) with India's mandatory biometric ecosystem (Aadhaar), which creates a "data exhaust" trail that compromises relocated witnesses. Through a comparative analysis with the United States Federal Witness Security Program (WITSEC), the UK Protected Persons Service (UKPPS), and Italy's *pentiti* versus *testimoni di giustizia* systems, the research underscores the structural necessity for a centralized, federally funded protection agency. The report concludes with a reform blueprint advocating for a "lifecycle" approach to protection that integrates physical security with digital anonymity and psychosocial rehabilitation.

1. Introduction: The Crisis of Testimony in an Adversarial System

The foundational premise of the adversarial criminal justice system, which India inherited from British colonial jurisprudence, is the dialectical contest between the prosecution and the defense. In this arena, the judge acts as a neutral arbiter, and the verdict is predicated almost entirely on the evidence presented. Within this framework, oral testimony occupies a position of primacy. Jeremy Bentham, the English philosopher and jurist, famously characterized witnesses as the "eyes and ears of justice," a metaphor that has been cited *ad infinitum* by the Supreme Court of India to underscore the indispensability of truthful testimony.¹ This judicial reliance on oral evidence assumes that the witness is a conscientious citizen, willing and able to narrate the facts as they transpired. However, the efficacy of this system rests on a fragile assumption: that the witness is a free agent, capable of speaking the truth without fear of retribution.

In the Indian context, this assumption has been systematically dismantled by a culture of intimidation, muscle power, and legislative apathy. The phenomenon of the "hostile witness" is not merely a legal technicality in India; it is a systemic pathology. A witness is termed "hostile" when they retract their previous statement made to the police or testify contrary to the prosecution's case in court. While the law of evidence in India, specifically the Indian Evidence Act, 1872 (and now the Bharatiya Sakshya Adhiniyam, 2023), does not strictly define "hostile witness," judicial interpretation allows the court to grant permission to the party calling the witness to cross-examine them.²

It is imperative to distinguish this framework from the *Whistle Blowers Protection Act, 2014*. While both statutes aim to shield truth-tellers, "Witness Protection" strictly pertains to those deposing in criminal trials (where the threat originates from the accused), whereas "Whistleblower Protection" safeguards insiders exposing administrative corruption (where the threat often originates from the state or the organization itself). This report focuses exclusively on the former, addressing the unique procedural and physical security challenges faced by trial witnesses.³

In the contemporary digital era, this challenge is compounded by the phenomenon of "data

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1. See Jeremy Bentham, *Rationale of Judicial Evidence* (1827); cited in *Mahender Chawla v. Union of India*, (2019) 14 SCC 615, ¶ 7.
 2. Indian Evidence Act, 1872, § 154; see also *Sat Paul v. Delhi Administration*, (1976) 1 SCC 727.
 3. Whistle Blowers Protection Act, 2014, No. 17, Acts of Parliament, 2014 (India).

exhaust." Unlike the physical era where relocation was merely geographic, modern protection requires coordinated confidentiality across interoperable databases (telecom, banking, welfare), making the "disappearance" of a witness administratively complex.⁴ The digital footprint left by a witness—through mobile tower locations, UPI transactions, and Aadhaar authentications—creates a surveillance capitalism ecosystem that can be weaponized by sophisticated criminal syndicates to track relocated witnesses.

The frequency with which key eyewitnesses in heinous crimes—murder, rape, and terrorism—turn hostile suggests a collapse of the state's protective capacity. From the infamous *Best Bakery* case, where Zahira Sheikh repeatedly changed her testimony under threat, to the *Jessica Lal* murder case, where witnesses retracted statements in the face of political power, the narrative is consistent: the cost of truth is often the witness's life or livelihood.⁵ In the *Best Bakery* case, the Supreme Court famously remarked that "legislative measures to emphasise the prohibition against tampering with witness, victim or informant have become the imminent and inevitable need of the day."⁶

1.1 The Statistical Reality of Witness Hostility

The correlation between witness intimidation and acquittal rates in India is stark. The conviction rate for Indian Penal Code (IPC) crimes in 2022 stood at approximately 44% (specifically 54.2% in some datasets, but dropping significantly in specific heinous categories).⁷ In cases involving organized crime or influential accused, the rate drops significantly due to compromised testimonies. For instance, in trafficking cases, where victims are the primary witnesses, the acquittal rate soared to 84% in 2021, a failure directly attributed by NGOs and the U.S. State Department's Trafficking in Persons Report to the lack of victim-witness protection services.⁸

The Supreme Court, in *State of Gujarat v. Anirudh Singh* (1997), held that it is the "salutary

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4. See generally 198th Report of the Law Commission of India, Witness Identity Protection and Witness Protection Programmes (2006) (discussing the complexities of identity change in modern administrative states).
 5. See *Zahira Habibulla H. Sheikh v. State of Gujarat (Best Bakery Case)*, (2004) 4 SCC 158; *State (NCT of Delhi) v. Sidhartha Vashisht @ Manu Sharma (Jessica Lal Case)*, (2010) 6 SCC 1.
 6. *Zahira Habibulla*, (2004) 4 SCC 158.
 7. See Nat'l Crime Records Bureau, *Crime in India 2022: Statistics* (2023) (reporting conviction rate of ~44% for IPC crimes, with variation across states); see also Mahender Chawla, (2019) 14 SCC 615.
 8. See U.S. Dep't of State, *Trafficking in Persons Report: India* (2023) (citing NCRB 2021 data indicating an 84% acquittal rate in trafficking cases).

duty" of every witness to assist the state. The Court observed, "It is the salutary duty of every witness who has the knowledge of the commission of the crime, to assist the State in giving evidence."⁹ However, the procedural machinery often works against this duty. In *State of U.P. v. Shambhu Nath Singh*, the Supreme Court identified the culture of frequent adjournments as a primary vector for witness intimidation. The Court noted that long gaps between hearings create "incubation periods" for tutoring and coercion, effectively turning time into a weapon against the truth.¹⁰ Without a reciprocal statutory obligation on the state to protect them, as noted in *Mahender Chawla* (2018), this duty to testify becomes a death sentence.¹¹

1.2 The Sociology of Intimidation: Muscle Power and Political Nexus

The sociology of crime in India reveals that witness intimidation is often structural rather than incidental. In cases involving *bahubalis* (local strongmen) or political figures, the local police station is often compromised. The *Umesh Pal* murder case in 2023, where a key witness in a high-profile political murder was gunned down despite having police security, illustrates that "gunmen" are insufficient against organized syndicates.¹² Umesh Pal was a prime witness in the murder of BSP MLA Raju Pal; his assassination in broad daylight, while surrounded by police gunners, underscored the failure of the "security" model of protection (visible guards) versus the "secrecy" model (relocation and identity change).

The intimidation takes various forms: direct threats of violence, abduction of family members, economic boycotts in rural settings, and the weaponization of the legal process itself through endless adjournments that drain the witness's resources and resolve. In rural India, where social standing and caste dynamics are rigid, the "social boycott" of a witness belonging to a marginalized community by a dominant caste accused is a potent tool of silence that requires no physical violence.

This structural apathy has birthed a 'Privatization of Protection.' In high-stakes economic offences, wealthy witnesses often employ private security firms for safety, effectively purchasing their right to testify. Conversely, indigent witnesses in violent crimes are left to the

9. *State of Gujarat v. Anirudh Singh*, (1997) 6 SCC 514, ¶ 26.

10. *State of U.P. v. Shambhu Nath Singh*, (2001) 4 SCC 667, ¶ 6 (condemning adjournment culture).

11. See *Mahender Chawla v. Union of India*, (2019) 14 SCC 615 (discussing the lack of statutory obligation prior to the Scheme).

12. See *Umesh Pal Kidnapping Case: Atiq Ahmad, Two Accomplices Get Life Term*, New Indian Express (Mar. 28, 2023); *Umesh Pal Murder: Witness Protection Failure*, The Hindu (Feb. 2023).

mercy of an under-resourced state police, creating a *two-tier hierarchy of truth* where the safety of a testimony is contingent on the witness's economic capacity.

2. The Genesis of Protection: Judicial Legislation and the Scheme of 2018

Before 2018, India lacked a comprehensive legal framework for witness protection. Protection was ad-hoc, granted largely at the discretion of the police or through specific directions from High Courts in individual cases. The legislative vacuum persisted despite repeated recommendations from the Law Commission of India (14th, 154th, and 198th Reports) and the Malimath Committee on Reforms of Criminal Justice System (2003), all of which advocated for a statutory program to prevent the miscarriage of justice.¹³ The 198th Report of the Law Commission specifically drafted a "Witness (Identity) Protection Bill, 2006," but it remained in legislative limbo for over a decade.

2.1 *Mahender Chawla v. Union of India*: The Watershed Moment

The turning point arrived with the Supreme Court's judgment in *Mahender Chawla v. Union of India* (2018). The petitioners, witnesses in the high-profile rape cases against self-styled godman Asaram Bapu, faced life-threatening intimidation. Key witnesses, including Akhil Gupta and Kripal Singh, had been murdered or assaulted in a systematic campaign to derail the trial.¹⁴ The palpable danger to the remaining witnesses forced the Supreme Court to intervene.

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 (WPS 2018)*. The Court declared the Scheme to be the "law of the land" binding on all courts and states until Parliament enacted suitable legislation.¹⁵ This was a classic instance of judicial legislation, filling a vacuum that the executive and legislature had left open for decades.

2.2 Analysis of the Witness Protection Scheme 2018

The WPS 2018 was the first document to standardize the categorization of threat and the allocation of protection measures. It effectively removed the arbitrariness of police discretion

13. See Law Commission of India, 198th Report (2006); Comm. on Reforms of Crim. Just. Sys. (Malimath Committee), Report (2003).

14. *Mahender Chawla*, (2019) 14 SCC 615 (detailing attacks on witnesses Akhil Gupta and Kripal Singh).

15. *Id.* at ¶ 34 (invoking Art. 141 and 142 to enforce the Scheme).

by establishing a "Competent Authority." The Scheme was drafted by the Ministry of Home Affairs in consultation with the National Legal Services Authority (NALSA) and the Bureau of Police Research and Development (BPR&D).

2.2.1 Classification of Threat Perception

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.¹⁶

Category	Definition	Duration of Threat	Typical Protection Measures
Category A	Threat extends to the <i>life</i> of the witness or their family members.	During investigation, trial, or <i>thereafter</i> .	Relocation, Change of Identity, Close Protection Detail (Gunmen), In-camera trial.
Category 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 court.
Category C	Threat is <i>moderate</i> , extending to harassment or intimidation.	During investigation or trial.	Emergency contact numbers, Legal warnings to accused, Temporary security.

Analysis of Categorization: The inclusion of "reputation" and "property" in Category B acknowledges that intimidation often takes non-lethal forms, such as social boycott or economic destruction, which are particularly effective in rural India. However, the distinction that Category A threats extend "thereafter" (post-trial) is the most significant aspect, aligning with global standards like the US WITSEC, which recognizes that the danger from organized crime does not end with a verdict.¹⁷

16. Witness Protection Scheme, 2018, Clause 7 (India).

17. Compare Witness Protection Scheme, 2018, Clause 3(a) (Category A definition), with 18 U.S.C. § 3521 (United States).

2.2.2 The Institutional Mechanism: Competent Authority

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.¹⁸ This composition acts as a check on police apathy, 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.¹⁹ 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.²⁰

2.2.3 The Witness Protection Fund

The Scheme mandates the creation of a *State Witness Protection Fund* in every state and Union Territory. 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.²¹

Implementation Failure: As discussed in Section 7, the operationalization of this fund has been uneven. While Delhi has a functional fund utilized for expenses, many states have allocated zero or token amounts, rendering the provisions of relocation and sustenance theoretical.²² The lack of a central corpus means that witness protection is subject to the fiscal

18. Witness Protection Scheme, 2018, Clause 2(c).

19. Id. at Clause 6 (Threat Analysis Report).

20. Id. at Clause 9 (Review).

21. Id. at Clause 11 (Witness Protection Fund).

22. See Mahender Chawla, (2019) 14 SCC 615 (noting the necessity of funds for effective implementation).

health of individual states, creating a disparity in the quality of justice administered across the union.

3. The Statutory Mandate: BNSS Section 398 and the New Era

With the repeal of the Code of Criminal Procedure (CrPC) and the enactment of the *Bharatiya 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.²³

3.1 Textual Analysis of Section 398

Section 398 explicitly states: "Every State Government shall prepare and notify a Witness Protection Scheme for the State with a view to ensure protection of the witnesses."²⁴

Key Legal Implications:

- **Mandatory Nature:** The use of the word "shall" imposes 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.
- **Decentralized Federalism:** The section allows each state to "prepare and notify" its own scheme. While this allows for local adaptation (e.g., specific provisions for Left Wing Extremism in Chhattisgarh or cross-border smuggling in Punjab), it risks creating a fragmented landscape where the quality of protection varies wildly based on state resources.²⁵ The BNSS does not prescribe *minimum standards* for these schemes, potentially allowing states to dilute the robust provisions of the WPS 2018.
- **Institutional Support & Penalties:** While Section 398 is a brief enabling provision, the specific Schemes notified under its mandate (such as the *Chandigarh Witness Protection Scheme, 2024*) have institutionalized "Witness Assistance Cells" and "Competent

23. Bharatiya Nagarik Suraksha Sanhita, 2023, § 398, No. 46, Acts of Parliament, 2023 (India).

24. Id.

25. See Chandigarh Witness Protection Scheme, 2024, Chandigarh Admin. Gaz. (Aug. 16, 2024) (example of state-specific notification).

Authorities" at the district level. This moves the protection architecture from ad-hoc police orders to a structured, judicially-oversighted mechanism.²⁶

3.2 State Notifications and Compliance

Following the enactment of BNSS, various states and Union Territories have begun notifying their respective schemes. For instance, the *Chandigarh Witness Protection Scheme, 2024* was notified under Section 398, defining "concealment of identity" and establishing a Standing Committee chaired by the District Judge.²⁷ This indicates that the administrative structure of the WPS 2018 (District Judge + Police Head) has been largely retained in the new statutory schemes.

The notification of these schemes is not merely bureaucratic; it provides the *locus standi* for a witness to demand protection as a matter of right rather than judicial benevolence. While Union Territories like Chandigarh have been proactive in notifying schemes under Section 398, state-level uptake has been uneven: Telangana has since gazetted the *Telangana Witness Protection Scheme, 2025* under Section 398, whereas Odisha continues to operate its earlier *Witness Protection Scheme, 2019* alongside the *High Court of Orissa Guidelines for Recording Evidence of Vulnerable Witnesses and Functioning of Vulnerable Witnesses Deposition Centres, 2024*, which strengthen courtroom safeguards but do not, by themselves, constitute a holistic witness-protection framework.²⁸

3.3 Institutionalization of Support Cells

The new statutory schemes often mandate the creation of *Witness Assistance Cells* (WAC) or similar bodies. These cells are tasked with the logistical aspects of protection—ensuring the witness arrives at court safely, managing the disbursement of funds, and coordinating with local police for threat assessments. This institutionalization is vital for moving beyond the personality-driven enforcement of the past, where a proactive judge or police officer was the only guarantee of safety.²⁹ The Chandigarh scheme, for example, details the composition and

26. Id. (establishing Witness Assistance Cells).

27. Id. at Clause 2(c).

28. Compare Telangana Witness Protection Scheme, 2025 (notified under BNSS), with Odisha Witness Protection Scheme, 2019 (pre-BNSS).

29. See Chandigarh Witness Protection Scheme, 2024.

duties of these cells, integrating them directly into the court complex infrastructure to serve as a physical safe harbor for witnesses on the day of deposition.

4. Special Statutes and the "Blanket Protection" Debate

While the BNSS provides a general framework, India's anti-terror and organized crime laws contain specific, stringent provisions for witness anonymity. These provisions have sparked intense jurisprudential debate regarding the balance between the *Right to Fair Trial* (which implies the right to confront one's accuser) and the *Right to Life* of the witness.

4.1 Unlawful Activities (Prevention) Act (UAPA): Section 44

In terror investigations, the asymmetry of power between the accused (often backed by organizations) and the witness is extreme. Section 44 of the UAPA and the corresponding Section 17 of the National Investigation Agency (NIA) Act empower the court to hold proceedings *in camera* and to take measures to keep the identity and address of the witness secret.³⁰ These provisions allow the court to redact the name of the witness from court records and issue unique alphanumeric identifiers (e.g., "Witness A-1") to replace names during the trial.

4.2 The Jurisprudence of Redaction and Disclosure

The legal battleground often shifts to Section 207 of the CrPC (now BNSS), which mandates supplying police reports and documents to the accused. Defense counsels argue that redacted statements prevent effective cross-examination. If the defense does not know who the witness is, they cannot challenge the witness's credibility, bias, or history of animosity with the accused.

4.2.1 Waheed-ur-Rehman Parra: Balancing Fair Trial and Secrecy

Waheed-ur-Rehman Parra v. Union Territory of J&K (2022): This Supreme Court judgment is the *locus classicus* on the subject. 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 defense, but not the *identity* or

30. Unlawful Activities (Prevention) Act, 1967, § 44, No. 37, Acts of Parliament, 1967 (India); National Investigation Agency Act, 2008, § 17.

address of the witness. The Court held that redaction is "fair and reasonable" if it obscures only identifying particulars while disclosing the material facts.³¹

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), favoring the latter as it preserves the defense's ability to prepare without exposing the witness.

4.2.2 Mohammed Asarudeen (2025): The End of Blanket Orders

The jurisprudence has further evolved with the recent ruling in *Mohammed Asarudeen v. Union of India (2025)*. 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 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.³²

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.³³

4.3 MCOCA and the Presumption of Danger

The *Maharashtra Control of Organized Crime Act (MCOCA), 1999*, was a pioneer in statutory witness protection. Section 19 of MCOCA allows the Special Court to keep witness identities secret. Unlike general law, where the burden is on the witness to prove a threat, MCOCA

31. Waheed-ur-Rehman Parra v. Union Territory of J&K, (2022) SCC OnLine SC 237, ¶ 24.

32. Mohammed Asarudeen v. Union of India, (2025) INSC 746 (Feb. 21, 2025).

33. Id. (establishing the twin-stage test).

operates on a legislative presumption that organized crime inherently poses a danger to witnesses. Violating the secrecy of a witness in an MCOCA case is a punishable offense.³⁴ This shifts the burden, acknowledging the reality that organized crime syndicates operate on a reputation of violence that makes explicit threats unnecessary.

5. Vulnerable Witnesses and High Court Implementations

Beyond terrorism, the protection of "vulnerable witnesses"—children, sexual assault survivors, and those with disabilities—has seen significant judicial activism, particularly from the High Courts.

5.1 POCSO Act and the Smruti Tukaram Badade Judgment

The *Protection of Children from Sexual Offences (POCSO) Act, 2012* mandates child-friendly procedures. Section 33 ensures the child does not see the accused during testimony. In *Smruti Tukaram Badade v. State of Maharashtra* (2022), the Supreme Court expanded the scope of "vulnerable witnesses" beyond just child victims. It directed all High Courts to establish *Vulnerable Witness Deposition Centres (VWDC)*. The Court emphasized that a "barrier-free environment" is a component of the right to access justice.³⁵ The judgment mandated that every High Court must have a permanent VWDC committee to monitor compliance, effectively creating a parallel infrastructure for vulnerable testimonies.

5.2 The Delhi High Court Model: 2024 Guidelines and Judicial Discipline

The Delhi High Court has been the standard-bearer for witness protection in India.

- **Vulnerable Witness Deposition Complexes (VWDC):** Delhi established the country's first VWDCs. These complexes feature separate entries for witnesses, a waiting room with books and toys (for children), and a courtroom equipped with a live video link and a one-way mirror. The accused can see the witness on a screen, but the witness cannot see the accused. This infrastructure has drastically reduced secondary victimization.³⁶
- **Guidelines:** Recently, the *Delhi High Court Vulnerable Witness Guidelines, 2024* have

34. Maharashtra Control of Organized Crime Act, 1999, § 19, Mah. Act No. 30 of 1999.

35. *Smruti Tukaram Badade v. State of Maharashtra*, (2022) SCC OnLine SC 78.

36. See *Vulnerable Witness Deposition Complexes*, Delhi District Courts (last visited Jan. 30, 2026).

consolidated these protocols, extending them beyond children to all vulnerable depositors. The guidelines mandate simple language during questioning and prohibit aggressive cross-examination tactics.³⁷

- **Judicial Discipline:** Conversely, the need for internal judicial discipline was highlighted by the Calcutta High Court, which ruled that accidental disclosure of a protected witness's name in court orders defeats the purpose of UAPA Section 44(3), necessitating mandatory redaction even in judicial records.³⁸

5.3 Beyond Delhi: High Court Rulings and Virtual Courts

- **Punjab and Haryana High Court:** In *Abhijeet Singh v. State of Punjab*, the High Court emphasized the "solemn duty" of the judiciary to act as a guardian for those incapable of protecting themselves. In recent bail denials in POCSO cases, the Court has cited witness vulnerability as a primary ground for incarceration, reinforcing that the "soul of society is judged by how it treats its children".³⁹
- **Bombay High Court:** The Court has actively used *video conferencing* to record evidence of witnesses who have been repatriated to other countries (e.g., trafficking victims returned to Nepal), ensuring that geographical distance does not become a barrier to justice or a cause for witness intimidation.⁴⁰

6. Global Comparative Analysis: The Gold Standards

To understand the structural deficits in India, it is essential to benchmark the WPS 2018/BNSS against mature protection frameworks in other jurisdictions.

6.1 United States: The Federal Witness Security Program (WITSEC)

The US *WITSEC* program, established by the *Organized Crime Control Act of 1970* and reformed by the *Witness Security Reform Act of 1984*, is the global benchmark. Managed by

37. Guidelines of the High Court of Delhi for Recording of Evidence of Vulnerable Witnesses, 2024.

38. See generally Waheed-ur-Rehman Parra, (2022) SCC OnLine SC 237 (referencing judicial discipline in maintaining anonymity).

39. *Abhijeet Singh v. State of Punjab*, (Punjab & Haryana High Court).

40. See Smruti Tukaram Badade, (2022) SCC OnLine SC 78 (referencing Bombay HC compliance reports).

the *U.S. Marshals Service*, it is a federal, centralized, and heavily funded operation.⁴¹

- **Total Identity Change:** The core of WITSEC is the complete erasure of the witness's past. The U.S. Marshals provide new legal identities (Social Security Numbers, birth certificates, driver's licenses) and relocate the witness and their family to a different state.
- **Success Metric:** The U.S. Marshals boast that "no witness who has followed the program's guidelines has ever been killed." This 100% success rate is attributed to the "breach-proof" nature of the relocation.⁴²
- **Funding:** The program is federally funded, ensuring that a witness's safety is not dependent on the budget of the local police department where the crime occurred.

6.2 United Kingdom: The Protected Persons Service (UKPPS)

The UK system, governed by *Chapter 4 of the Serious Organised Crime and Police Act (SOCPA) 2005*, offers a different model focused on regional coordination.

- **UK Protected Persons Service (UKPPS):** Unlike the US's monolithic Marshals Service, the UKPPS is a collaboration between the National Crime Agency (NCA) and regional police forces (e.g., Police Scotland, Met Police). It standardizes protection across jurisdictions.⁴³
- **Anonymity Orders:** The UK courts frequently use "Witness Anonymity Orders" under the *Coroners and Justice Act 2009*, allowing witnesses to testify using pseudonyms and voice modulation. This is more common than the total identity change seen in the US.⁴⁴
- Crucially, unlike India where anonymity is primarily restricted to special statutes (like UAPA or POCSO), the UK framework standardizes anonymity orders for general serious crimes, thereby offering a viable alternative to the logistical nightmare of Identity Change.

41. Witness Security Reform Act of 1984, 18 U.S.C. §§ 3521-3528 (United States).

42. Witness Security Program, U.S. Marshals Service (last visited Jan. 30, 2026).

43. Serious Organised Crime and Police Act 2005, c. 15, §§ 70-81 (UK).

44. Coroners and Justice Act 2009, c. 25, §§ 86-90 (UK).

6.3 Italy: The *Pentiti*, *Testimoni di Giustizia*, and Law No. 6/2018

Italy’s system is unique due to its historical battle with the Mafia and its focus on *pentiti* (penitents)—former Mafia members who turn state's evidence.

- **Law No. 82 of 1991:** This law formalized the benefits for *collaboratori di giustizia*. It includes sentence reduction, protection, and a *monthly stipend*.⁴⁵
- **New Law No. 6/2018:** Recently, this framework was expanded by *Law No. 6 of 2018*, which specifically extends protection to 'judicial witnesses' (*testimoni di giustizia*) who are not ex-criminals (*pentiti*) but innocent bystanders. This distinction is vital, as it separates those seeking redemption from those fulfilling a civic duty, ensuring the latter receive dignified support rather than just "defector" treatment. This law emphasizes that innocent witnesses should not suffer a diminution in their standard of living due to their testimony.⁴⁶

6.4 Australia and Canada: Statutory Frameworks

- **Australia:** The *National Witness Protection Program (NWPP)* operates under the *Witness Protection Act 1994*. It functions on a "complementary legislation" model where state laws mirror the federal act, allowing for seamless interstate relocation.⁴⁷
- **Canada:** The *Witness Protection Program Act (1996)* governs the federal program. The *Safer Witnesses Act (2012)* streamlined the process, allowing provincial witnesses to access federal identity changes (passports, SIDs) more easily.⁴⁸

Table 1: Comparative Analysis: India vs. Global Standards

Feature	India (WPS 2018 / BNSS)	USA (WITSEC)	UK (UKPPS / SOCPA)	Italy (Pentiti / Law 6/2018)
Legal Basis	BNSS Sec 398 / Judicial Scheme	Witness Security Reform Act 1984	SOCPA 2005 (Chapter 4)	Law No. 82 of 1991 & Law No. 6 of 2018

45. Law No. 82 of Mar. 15, 1991 (Italy).

46. Law No. 6 of Jan. 11, 2018 (Italy).

47. Witness Protection Act 1994 (Cth) (Austl.).

48. Witness Protection Program Act, S.C. 1996, c. 15 (Can.); Safer Witnesses Act, S.C. 2012, c. 32 (Can.).

Identity Change	Theoretically allowed (Category A) but technically obstructed by Aadhaar.	Routine & Effective. New SSN/Birth Cert provided.	New identity provided; Anonymity Orders common.	New identity provided for <i>collaborators</i> and <i>judicial witnesses</i> .
Agency	District Police / State Govt (Decentralized).	U.S. Marshals Service (Federal, Independent).	UKPPS (National agency coordinating regional units).	Central Protection Service (Police).
Funding	State Witness Protection Funds (often underfunded/empty).	Dedicated Federal Budget (High resource allocation).	National/Police budgets.	State funded monthly stipends.
Relocation	Temporary (Relative's house or nearby district).	Permanent relocation across continent.	Relocation within UK network.	Relocation to secret locations; high stipend.
Beneficiaries	Vulnerable witnesses, victims, families	Witnesses, accomplices, families.	Witnesses, persons at risk.	Mafia defectors (<i>Pentiti</i>) & Innocent Witnesses (<i>Testimoni</i>).

7. Structural Failures and The Digital/Aadhaar Paradox

Despite the robust text of BNSS Section 398, the implementation of witness protection in India faces existential structural hurdles that do not exist in the US or UK.

7.1 The Aadhaar Identity Trap and Biometric De-duplication

The most critical failure in India's "Category A" protection (Change of Identity) is the *Aadhaar* biometric system.

- **Biometric De-duplication:** Unlike a US Social Security Number, which is a numeric string, Aadhaar is linked to iris scans and fingerprints. The system is designed to prevent duplicates. If a witness is given a new name and relocated, they cannot function in Indian society (open a bank account, rent a house, get a SIM card) without an Aadhaar card.⁴⁹

49. See Unique Identification Authority of India (UIDAI), Biometric De-duplication Guidelines.

- **The Deadlock:** If the witness applies for a new Aadhaar under their new name, the UIDAI system will flag the biometrics as a duplicate of their old identity. There is currently no publicly known, secure protocol within UIDAI to create a "masked" or "dummy" biometric profile that allows a witness to pass verification without linking back to their original, threatened identity. This effectively renders the "Change of Identity" clause in WPS 2018 technologically unimplementable. A witness cannot exist "off the grid" in modern India without forfeiting all socio-economic rights.

Beyond Aadhaar, a 'Digital Blindspot' exists in the admission of electronic evidence under BNSS Section 63. While the *content* of a witness's testimony may be redacted, the *metadata* of digital files (EXIF data, IP logs, and device fingerprints) often remains visible to defense experts. Without a statutory mandate to 'sanitize' the metadata of digital submissions, a protected witness can be geo-located by a hostile accused using the very evidence meant to convict them.

7.2 Funding Federalism: The Centre-State Conflict

The WPS 2018 places the financial burden on *State Witness Protection Funds*.

- **Fiscal Disparity:** Richer states like Delhi or Maharashtra may allocate funds, but poorer states with high crime rates (e.g., Bihar, UP) often have empty protection coffers.
- **Implementation Gap:** Reports indicate that even where funds exist on paper, the actual disbursement for "sustenance allowance" is plagued by bureaucratic delays. Witnesses often have to pay for their own travel to court, exposing them to risk.⁵⁰ The Law Commission had recommended a central fund, but the current scheme relies on state budgets, leading to unequal protection under the law. This fiscal federalism failure means a witness's safety is determined by their geography rather than the threat they face.
- Notably, the *Telangana Witness Protection Scheme, 2025* attempts to bridge this fiscal deficit by innovatively permitting contributions from Corporate Social Responsibility (CSR) funds towards the Witness Protection Fund, a model that warrants replication

50. See Mahender Chawla, (2019) 14 SCC 615 (discussing witness financial hardships).

nationwide.⁵¹

7.3 The Police-Centric Threat Analysis: Conflicts of Interest

The *Threat Analysis Report (TAR)* is the gatekeeper of protection.

- **Conflict of Interest:** In cases involving police corruption or political nexus (e.g., the *Umesh Pal* case involving gangster-politician Atiq Ahmed), the local police are tasked with assessing the threat against a witness testifying against their own political masters.
- **The Umesh Pal Failure:** Umesh Pal, a witness in a murder case, was provided two police gunners. However, the threat assessment failed to account for the tactical capabilities of the attackers. The static, reactive police protection was easily neutralized by a coordinated assault.⁵² This highlights the stark difference between "gunmen" (India's reactive model) and "covert relocation" (US/UK proactive model).

8. Conclusions and Recommendations

The enactment of *Section 398 of the BNSS* represents a monumental shift in Indian criminal justice, elevating witness protection from a judicial guideline to a statutory imperative. However, as the comparative analysis demonstrates, a statute without the requisite infrastructure is merely a statement of intent. The Indian system currently operates on a "security" model (gunmen) rather than a "secrecy" model (identity change/relocation), which is resource-heavy and prone to failure.

8.1 The Necessity of a Federal Agency

The decentralized model is flawed. Organized crime and terrorism are interstate. India requires a central agency, akin to the *U.S. Marshals*, specifically for high-risk witnesses, independent of the investigating police force. Fiscal Centralization is equally critical; witness protection in federal crimes (NIA/CBI cases) must be funded by a *Central Witness Protection Fund*, ensuring that a witness's safety is not contingent on their state's fiscal deficit. Furthermore, operationalizing the Central Fund should involve innovative fiscal mechanisms, including the

51. Telangana Witness Protection Scheme, 2025, Clause 4(b)(iv) (notified via G.O.Ms.No.83, Home (Courts.B) Dept., Oct. 9, 2025).

52. See *Umesh Pal Murder: Witness Protection Failure*, *The Hindu* (Feb. 2023).

integration of Corporate Social Responsibility (CSR) contributions as pioneered by the Telangana Scheme, 2025.

The federal structure of Section 398 creates a 'jurisdictional friction.' Currently, there is no *Inter-State Portability Protocol*. If a witness from Telangana is relocated to Karnataka, the Telangana State Fund cannot easily audit or fund expenses incurred in another jurisdiction due to state auditing rules. A Federal Witness Protection Agency must establish a 'clearinghouse mechanism' to facilitate seamless funding and security transfers across state lines.

8.2 Digital Solutions: Protected KYC

- **The Aadhaar Barrier:** Unless the Ministry of Electronics and Information Technology (MeitY) and UIDAI develop a secure protocol for "Witness Identities" that bypasses standard de-duplication while allowing verification, "Category A" protection will remain a fiction. To operationalize this, the government must introduce a "*Protected KYC*" pathway for banking and telecom services. This would allow 'Category A' witnesses to access essential services using a masked identity token that validates their credentials to the service provider without revealing their legacy identity.⁵³

8.3 The Lifecycle Model of Protection

- **Beyond Redaction:** The Supreme Court's jurisprudence in *Waheed-ur-Rehman Parra* and *Asarudeen* is a pragmatic compromise, but it risks exposing witnesses through context. Greater investment in *remote testimony technologies* (as seen in Delhi's VWDCs) provides a better balance of rights than mere document redaction.
- **Psychosocial Rehabilitation:** Beyond finances, the psychosocial cost of relocation remains unaddressed. A robust scheme must include "*social re-establishment*" support—counseling and community integration aid—to prevent witnesses from returning to unsafe environments due to isolation.⁵⁴

Ultimately, India must transition from a "security-centric" model to a "lifecycle" model. Finally, the statutory framework must evolve from an offence-triggered eligibility approach to

53. See 198th Report of the Law Commission of India (2006) (recommending secure identity mechanisms).

54. See United Nations Office on Drugs and Crime (UNODC), *Good Practices for the Protection of Witnesses in Criminal Proceedings involving Organized Crime* (2008).

a threat-centric model, ensuring that protection is accessible to any witness facing genuine peril, regardless of the offence category. Protection is not merely about providing a gunman during the trial; it encompasses the witness's secure relocation, identity management in digital ecosystems, and social re-establishment post-verdict. The Indian witness remains, in many ways, a "sitting duck." Until the structural rigidity of Aadhaar and the fiscal lethargy of states are addressed, the "eyes and ears of justice" will continue to be coerced into silence, and the promise of the BNSS will remain unfulfilled.