ADDRESSING WITNESS INTIMIDATION AND HOSTILITY IN INDIA'S CRIMINAL JUSTICE SYSTEM: AN ANALYSIS OF THE WITNESS PROTECTION SCHEME, 2018

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ABSTRACT

Witness testimony remains central to criminal adjudication, yet witnesses in India have historically participated in criminal proceedings without a comprehensive institutional guarantee of safety. This has contributed to intimidation, coercion, and hostile testimony, weakening the truth-finding function of criminal courts and undermining public confidence in justice. The Witness Protection Scheme, 2018 marks India's first nationally applicable framework for addressing witness vulnerability. Its emergence must be understood within the broader evolution of Indian criminal justice, including Law Commission Reports, judicial interventions, and reform initiatives that repeatedly recognised the problem of witness intimidation but failed to produce a unified protection regime.

Hostile testimony should not be understood merely as an evidentiary defect or as a question of witness credibility. In many cases, it reflects the inability of the legal system to protect witnesses from fear, retaliation, and social or economic pressure before trial. The Witness Protection Scheme, 2018 is therefore both a significant institutional advance and an incomplete response. It introduces threat categorisation, judicial oversight, Threat Analysis Reports, identity protection, relocation, courtroom safeguards, and a Witness Protection Fund. However, its effectiveness remains constrained by its executive origins, dependence on police-generated threat assessments, uneven state-level implementation, limited awareness, dependence on adequate state-level funding, inadequate long-term support, and insufficient attention to digital forms of intimidation. The paper concludes that witness protection is not a peripheral welfare measure but a structural requirement of fair trial and effective criminal adjudication. Strengthening the existing framework through statutory clarity, greater institutional independence, assured funding, post-trial support, and safeguards against digital threats is essential to ensuring both witness security and the integrity of the criminal process.

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I. Introduction and Importance of Witness Protection in India's Criminal Justice System

Witness testimony occupies a central position in criminal adjudication because courts often depend upon witnesses to reconstruct the facts surrounding an offence. The Witness Protection Scheme, 2018 itself invokes Jeremy Bentham's well-known description of witnesses as the "eyes and ears of justice," reflecting the basic idea that criminal courts cannot discover truth unless witnesses are willing and able to speak before them.[2] In many prosecutions, especially those involving violence, sexual offences, organised crime, terrorism, communal conflict, or politically influential accused persons, witness testimony may provide the most direct link between the offence and the accused. The effectiveness of criminal justice therefore depends not only on the existence of witnesses, but also on whether they can testify truthfully, freely, and without fear.

The difficulty is that witnesses often enter the criminal process from a position of vulnerability. They may face threats to life, property, livelihood, reputation, or family members. They may also suffer repeated court appearances, loss of wages, social pressure, and fear of retaliation. The Witness Protection Scheme, 2018 recognises this problem in direct terms: it states that witnesses may turn hostile because of threats and intimidation, and that the absence of effective protection can prejudice investigation, prosecution, and trial.[3] This official recognition is important because it shows that witness hostility cannot always be explained as dishonesty or unreliability. In many cases, hostility is the visible result of a failure to create safe conditions for truthful testimony.

This distinction is central to the present paper. Indian evidence law has traditionally addressed hostile witnesses through courtroom mechanisms, particularly by permitting a party to cross-examine its own witness.[4] Such provisions are necessary, but they operate after the damage has already occurred. They allow the court to respond to hostile testimony, but they do not explain why the witness became hostile or how intimidation could have been prevented before trial. A purely evidentiary approach therefore treats hostility as a problem of testimony, while witness protection treats it as a problem of institutional design. The central issue is not only whether

[2] Witness Protection Scheme, 2018, Preface.
[3] Id.
[4] Indian Evidence Act, No. 1 of 1872, § 154; Bharatiya Sakshya Adhiniyam, No. 47 of 2023, § 157.

the court can manage a hostile witness, but whether the State has created a system in which witnesses can safely avoid becoming hostile in the first place.

The constitutional importance of witness protection follows from this point. Article 21 of the Constitution protects life and personal liberty, and the right to a fair trial forms part of this constitutional guarantee.[5] Fairness in criminal proceedings cannot be confined only to the rights of the accused but it also requires conditions in which victims and witnesses can participate without fear. Article 39A further reflects the constitutional commitment to equal justice and access to justice.[6] A system in which witnesses are exposed to intimidation while assisting the administration of justice weakens both the reliability of trials and public confidence in courts. Witness protection is therefore not a peripheral administrative measure, but a necessary condition for fair and effective criminal adjudication.

The development of a formal witness protection framework in India must be understood against this background. For many years, witness protection existed only in a fragmented manner through scattered statutory provisions, judicial directions, and offence-specific safeguards. The Witness Protection Scheme, 2018 marked a significant development because it created the first nationally applicable framework for threat assessment, witness categorisation, protection orders, identity protection, relocation, and related protective measures.[7] More recently, Section 398 of the Bharatiya Nagarik Suraksha Sanhita, 2023 has given statutory recognition to witness protection by requiring every State Government to prepare and notify a witness protection scheme.[8] However, statutory recognition alone does not resolve the deeper questions of implementation, institutional independence, funding, witness awareness, and long-term protection.

This paper examines those questions through a doctrinal analysis of the Witness Protection Scheme, 2018. Its central contribution is to examine witness hostility not merely as an evidentiary defect, but as the visible consequence of an incomplete protective architecture. The paper evaluates the Scheme as both a landmark institutional response and a structurally limited framework. It argues that while the Scheme represents an important advance in Indian criminal justice, its effectiveness remains constrained by its executive origins, dependence on state-level

[5] INDIA CONST. art. 21.
[6] INDIA CONST. art. 39A.
[7] Witness Protection Scheme, 2018, cls. 3–7.
[8] Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, § 398.

implementation, reliance on police-generated threat assessment, and limited mechanisms for long-term support. The larger claim of this paper is that witness protection is not simply a welfare measure for witnesses; it is a structural requirement for truthful testimony, fair trial, and the legitimacy of the criminal justice system.

II. The Hostile Witness Crisis: Dimensions and Causes of Witness Intimidation in India

Having established that witness protection is essential to truthful testimony and fair criminal adjudication, it becomes necessary to examine the crisis that makes such protection indispensable that is the problem of hostile witnesses. Indian criminal courts have frequently encountered situations in which witnesses retract, dilute, or refuse to support their earlier statements during trial. In formal evidentiary terms, this problem is addressed through provisions permitting a party to put cross-examination questions to its own witness when the witness departs from the expected version of facts.[9] However, this legal treatment captures only the courtroom consequence of hostility, not its underlying cause. Hostile testimony is frequently not merely an evidentiary defect but it is the visible result of institutional failure before trial.

This distinction is crucial. A witness who resiles from an earlier statement because of fear, coercion, or retaliation cannot be equated with a witness who deliberately lies or fabricates evidence. Treating all hostile testimony as a problem of credibility risks ignoring the conditions in which testimony is produced. In serious prosecutions, particularly those involving organised crime, communal violence, terrorism, sexual offences, or politically influential accused persons, the witness may enter the courtroom only after having already faced pressure outside it. Threats to life, property, reputation, employment, or family members may operate long before the witness formally deposes. By the time hostility appears in court, the protective failure has often already occurred.

The Witness Protection Scheme, 2018 recognises this reality. Its Preface states that witnesses may face threats to life and property and that investigation, prosecution, and trial may be prejudiced where witnesses are intimidated or frightened from giving evidence.[10] This official recognition shifts attention from the formal reliability of testimony to the conditions under which testimony is given. It also exposes the limitation of a purely evidentiary response. The

[9] Indian Evidence Act, No. 1 of 1872, § 154; Bharatiya Sakshya Adhiniyam, No. 47 of 2023, § 157.
[10] Witness Protection Scheme, 2018, Preface.

law may permit a prosecutor to cross-examine a hostile witness, but cross-examination cannot undo the intimidation that has already shaped the witness's conduct. The central issue, therefore, is not only how courts should respond after a witness turns hostile, but how the legal system can prevent fear-induced hostility from arising in the first place.

The structural roots of this vulnerability are connected not only to threats, but also to delay and institutional burden. Criminal proceedings often require witnesses to appear repeatedly before courts over long periods. Official pendency data published through the National Judicial Data Grid reflects the heavy burden on the court system, including a substantial volume of pending criminal cases.[11] Delay increases the period during which witnesses remain exposed to pressure, retaliation, inducement, and fatigue. For witnesses with limited financial resources, repeated attendance may also mean loss of wages, travel costs, and disruption of livelihood. The longer the trial continues, the easier it becomes for intimidation to operate and the harder it becomes for witnesses to remain committed to the prosecution.

The problem becomes more severe where intimidation is linked to power. In cases involving socially, politically, or economically dominant accused persons, pressure may come not only from the accused but also from local networks capable of enforcing silence. Intimidation may take the form of direct threats, social boycott, economic retaliation, reputational harm, or threats against family members. The Witness Protection Scheme recognises this range of vulnerability by classifying threats according to their seriousness, including threats to life, safety, reputation, property, and intimidation of the witness or family members.[12] This classification is significant because it shows that witness vulnerability is not confined to physical violence alone but coercion may also operate through social and economic pressure.

The hostile witness crisis therefore affects the legitimacy of criminal adjudication itself. When truthful testimony is displaced by fear-induced retraction, prosecutions weaken, trials collapse, and public confidence in courts diminishes. The problem is not merely that an individual witness has changed their statement; the deeper concern is that the criminal process has failed to secure the conditions necessary for truth. Section 398 of the Bharatiya Nagarik Suraksha Sanhita, 2023 recognises this need by requiring every State Government to prepare and notify a witness protection scheme.[13] Yet the existence of such recognition does not by itself eliminate

[11] National Judicial Data Grid, eCourts Services, https://njdg.ecourts.gov.in/ .
[12] Witness Protection Scheme, 2018, cl. 3.
[13] Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, § 398.

intimidation. The challenge is preventive as much as procedural. A system concerned only with declaring a witness hostile after retraction addresses the symptom, not the cause. Effective witness protection requires the State to intervene before intimidation converts truthful knowledge into hostile testimony.

III. The Evolution of Witness Protection in India: Legislative, Institutional, and Law Reform Responses

The hostile witness crisis discussed in the preceding section did not emerge in a legal vacuum. Its causes fear, intimidation, economic vulnerability, repeated court appearances, and inadequate institutional support were recognised by official bodies long before the adoption of the Witness Protection Scheme, 2018. The problem, therefore, was not a lack of institutional awareness. Rather, the difficulty lay in the State's prolonged failure to translate repeated diagnoses into a comprehensive and enforceable protection framework. The evolution of witness protection in India reveals a gradual but uneven movement from concerns about witness inconvenience and evidentiary reliability towards a broader understanding of witness security as an indispensable condition of criminal justice.

Before 2018, Indian law addressed witness-related concerns in a fragmented and largely reactive manner. The Indian Evidence Act, 1872 dealt with hostile witnesses by permitting a party, with the court's permission, to cross-examine its own witness.[14] This provision helped courts manage hostile testimony after it appeared, but it did not address the conditions that produced hostility. Similarly, the Code of Criminal Procedure, 1973 contained provisions relating to the recording of evidence, the presence of the accused, and in-camera proceedings in limited situations, but it did not create a general witness protection regime.[15] Section 195A of the Indian Penal Code, inserted in 2006, criminalised threatening a person to give false evidence.[16] However, this too was primarily penal and reactive as it punished intimidation after it occurred rather than establishing a preventive institutional mechanism to protect vulnerable witnesses before harm materialised.

The earliest official recognition of witness vulnerability appeared in the Fourteenth Law Commission Report of 1958. The Report did not use the modern language of witness

[14] Indian Evidence Act, No. 1 of 1872, § 154.
[15] Code of Criminal Procedure, No. 2 of 1974, §§ 273, 327.
[16] Indian Penal Code, No. 45 of 1860, § 195A.

protection, but it drew attention to the practical hardships faced by witnesses in attending court, including inadequate facilities, unrealistic allowances, and inconvenience caused by court processes.[17] These concerns were framed as matters of witness welfare, yet they revealed an important structural imbalance where the criminal justice system expected citizens to assist the administration of justice while offering little support in return. This early stage of reform discourse therefore treated the witness less as a person requiring protection from danger and more as a participant burdened by inconvenience.

The Fourth Report of the National Police Commission in 1980 reinforced this concern. It recorded the harassment and inconvenience suffered by witnesses and referred to the observation that a witness often suffers "for no fault of his own."[18] The significance of this observation lies in its recognition that witnesses are not ordinary litigating parties who voluntarily enter court. They are often drawn into the criminal process because they happened to possess knowledge relevant to an offence. The State depends upon their participation, but the burdens of that participation—time, expense, risk, and social pressure—fall heavily on them. This imbalance created fertile conditions for intimidation, fatigue, and withdrawal from the prosecution's case.

The 154th Law Commission Report marked a further shift by linking witness participation with confidence in State protection. It emphasised that witnesses must be made to feel that they would be protected from the "wrath of the accused in any eventuality."[19] This was an important development because it moved beyond mere witness inconvenience and recognised fear of the accused as a real factor affecting testimony. However, the Report did not propose a complete witness protection statute. Its contribution lay in identifying the psychological and institutional need for confidence-building, better treatment of witnesses, and more realistic support, rather than in designing a comprehensive protective architecture.

The 172nd and 178th Law Commission Reports continued this gradual transition from welfare to procedural protection. The 172nd Report, dealing with rape laws, recommended safeguards such as screening and procedures to reduce the trauma of vulnerable witnesses, especially children and victims of sexual offences.[20] The 178th Report addressed the problem of hostile

[17] LAW COMM'N OF INDIA, 14TH REPORT, REFORM OF JUDICIAL ADMINISTRATION (1958).
[18] NAT'L POLICE COMM'N, FOURTH REPORT (1980).
[19] LAW COMM'N OF INDIA, 154TH REPORT ON THE CODE OF CRIMINAL PROCEDURE, 1973 (1996).
[20] LAW COMM'N OF INDIA, 172ND REPORT, REVIEW OF RAPE LAWS (2000).

witnesses by proposing procedural measures such as the recording of statements of material witnesses before Magistrates in serious cases.[21] These recommendations were significant because they recognised that ordinary trial processes could expose witnesses to pressure, trauma, or later retraction. Yet they remained focused largely on procedural safeguards and evidentiary reliability. They did not fully integrate witness anonymity, physical protection, relocation, and long-term security into one comprehensive statutory framework.

The most decisive law reform intervention came with the 198th Law Commission Report on Witness Identity Protection and Witness Protection Programmes in 2006. Unlike earlier reports, the 198th Report directly distinguished between two related but separate ideas: witness identity protection during investigation, inquiry, and trial, and broader witness protection programmes involving physical security, relocation, and change of identity.[22] The Report recognised that in certain categories of cases, disclosure of a witness's identity could itself create serious danger to life, property, or family. It therefore proposed a more structured framework, including anonymity measures, identity protection procedures, and a draft legislative model.[23] This Report is central to the evolution of Indian witness protection because it treated the issue not merely as a matter of courtroom management, but as a question of institutional security.

Despite these repeated recommendations, legislative responses remained piecemeal. Limited witness-related protections appeared in special statutes dealing with particular categories of offences, including laws relating to atrocities against Scheduled Castes and Scheduled Tribes, child sexual offences, organised crime, and terrorism-related prosecutions.[24] These provisions were important but offence-specific. They did not create a unified protection regime applicable to witnesses across the criminal justice system. The Witness Protection Scheme, 2018 itself acknowledged this gap by noting the absence of a formal and structured witness protection programme despite earlier recommendations and scattered statutory provisions.[25] The immediate institutional trigger for the Witness Protection Scheme, 2018 was the Supreme Court's decision in *Mahender Chawla v. Union of India*, where the Court approved the Scheme

[21] LAW COMM'N OF INDIA, 178TH REPORT, RECOMMENDATIONS FOR AMENDING VARIOUS ENACTMENTS, BOTH CIVIL AND CRIMINAL (2001).
[22] LAW COMM'N OF INDIA, 198TH REPORT, WITNESS IDENTITY PROTECTION AND WITNESS PROTECTION PROGRAMMES (2006).
[23] Id.
[24] See Witness Protection Scheme, 2018, Preface.
[25] Id.

and directed that it would operate as the "law" governing witness protection until Parliament or the competent legislature enacted suitable legislation. This judicial origin is significant because it confirms the central argument of this section: the Scheme did not emerge from ordinary legislative initiative, but from judicial intervention after decades of unimplemented law reform recommendations. More recently, Section 398 of the Bharatiya Nagarik Suraksha Sanhita, 2023 has provided statutory recognition by requiring every State Government to prepare and notify a witness protection scheme.[26] However, this recognition does not erase the historical problem of fragmented development or the continuing dependence on state-level implementation.

The cumulative significance of these developments is clear. Across decades, official bodies repeatedly identified witness vulnerability as a threat to criminal justice. The trajectory moved from witness inconvenience, to fear of the accused, to procedural safeguards, and finally to identity and physical protection. Yet the legal response remained delayed, partial, and reactive. The Witness Protection Scheme, 2018 therefore emerged not as a sudden innovation, but as a belated institutional response to a reform agenda that had remained substantially unfulfilled for more than half a century.

IV. Judicial Recognition and the Emergence of the Witness Protection Scheme, 2018

The legislative and law reform history discussed in the preceding section shows that witness vulnerability had long been recognised but inadequately addressed. As statutory responses remained fragmented, courts were repeatedly confronted with criminal trials in which witnesses retracted their statements, diluted their testimony, or refused to support the prosecution because of fear, coercion, or pressure. Judicial intervention therefore became central to the development of witness protection in India. The judiciary gradually moved the issue from the margins of criminal procedure to the core of fair trial jurisprudence, recognising that a trial cannot be fair if witnesses are unable to depose freely and truthfully.

An early and important stage in this development appeared in *Sakshi v. Union of India*, where the Supreme Court considered the difficulties faced by victims and vulnerable witnesses, particularly in sexual offence cases.[27] The Court recognised that conventional courtroom procedures may themselves create trauma and intimidation, especially where the victim or child

[26] Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, § 398.
[27] *Sakshi v. Union of India*, (2004) 5 SCC 518.

witness is required to depose in the physical presence of the accused. Although the case did not create a general witness protection regime, it endorsed procedural innovations such as the use of screens and alternative arrangements for recording evidence. Its significance lies in the judicial recognition that fairness in criminal proceedings sometimes requires adapting trial procedure to protect vulnerable witnesses from fear and trauma.

The issue acquired greater constitutional importance in the Best Bakery litigation. In *Zahira Habibulla H. Sheikh v. State of Gujarat*, the Supreme Court confronted a trial in which witness intimidation and failure of prosecution had seriously compromised the administration of justice.[28] The Court treated the collapse of the trial not as an ordinary evidentiary failure, but as a failure of the criminal justice system to secure conditions in which witnesses could speak the truth. It emphasised that a fair trial is not limited to the rights of the accused, but includes the interests of victims and society. This was a crucial doctrinal shift. It linked witness protection to the integrity of the trial itself and made clear that intimidation of witnesses undermines the truth-finding function of courts.

The Supreme Court reiterated this broader understanding of fair trial in *National Human Rights Commission v. State of Gujarat*.[29] The Court's concern in these cases was not merely that individual witnesses had changed their statements, but that the system had failed to provide an atmosphere in which testimony could be given without fear. Judicial reasoning thus moved beyond the formal evidentiary treatment of hostile witnesses and recognised the structural conditions that produce hostile testimony. This development directly supports the central argument of this paper: hostility is often the visible consequence of institutional failure before and during trial.

Other decisions also contributed to this judicial discourse. In *Swaran Singh v. State of Punjab*, the Supreme Court strongly criticised the manner in which witnesses are treated within the criminal process and noted the hardships they suffer in attending court.[30] The Court's observations reflected a wider concern that witnesses, despite being essential to justice, are often neglected, harassed, or left unsupported. Similarly, in *State of Gujarat v. Anirudhsing*, the Court emphasised that it is the duty of every person acquainted with the commission of an

[28] *Zahira Habibulla H. Sheikh v. State of Gujarat*, (2004) 4 SCC 158.
[29] *National Human Rights Commission v. State of Gujarat*, (2009) 6 SCC 767.
[30] *Swaran Singh v. State of Punjab*, (2000) 5 SCC 668.

offence to assist the State in the administration of justice.[31] However, this duty becomes meaningful only when the State provides corresponding conditions of safety and dignity.

The decisive breakthrough came in *Mahender Chawla v. Union of India*.[32] In that case, the Supreme Court considered the absence of a structured witness protection mechanism despite repeated recommendations by law reform bodies. Recognising that witnesses often face serious threats and that such threats directly affect criminal adjudication, the Court approved the Witness Protection Scheme, 2018. More importantly, it directed that the Scheme would operate as the governing framework for witness protection in all States and Union Territories until appropriate legislation was enacted. The judgment therefore transformed witness protection from a long-standing reform proposal into an operative legal framework.

The judicial origin of the Witness Protection Scheme is significant for two reasons. First, it confirms that witness protection had become a constitutional necessity linked to fair trial and Article 21, not merely an administrative convenience. Secondly, it reveals a structural weakness in the development of Indian criminal justice: the most comprehensive national framework for witness protection emerged through judicial direction rather than ordinary legislative action. The Scheme was therefore both a landmark and a symptom of institutional delay.

Judicial intervention succeeded in creating the first nationally applicable witness protection framework, but it did not eliminate all structural concerns. A scheme born through judicial mandate still depends upon administrative implementation, institutional coordination, funding, and awareness at the ground level. The next question, therefore, is whether the Witness Protection Scheme, 2018, in its design and operation, adequately addresses the vulnerabilities that prompted its creation.

V. The Witness Protection Scheme, 2018: Genesis and Institutional Architecture

The Witness Protection Scheme, 2018 represents the first nationally applicable institutional framework specifically designed to protect witnesses participating in criminal proceedings. It was approved by the Supreme Court in *Mahender Chawla v. Union of India*, where the Court directed that the Scheme would operate throughout India until suitable legislation was

[31] *State of Gujarat v. Anirudhsing*, (1997) 6 SCC 514.
[32] *Mahender Chawla v. Union of India*, (2019) 14 SCC 615.

enacted.[33] Its significance lies not merely in the fact that it created protective measures, but in the fact that it converted decades of reform recommendations into an operative framework. The Scheme therefore stands at the intersection of judicial intervention, law reform, and administrative implementation.

The Scheme is founded upon the recognition that witnesses are indispensable to the truth-finding function of criminal adjudication. Its Preface invokes the familiar description of witnesses as the "eyes and ears of justice" and acknowledges that threats, intimidation, inducement, and coercion can prevent witnesses from giving truthful testimony.[34] It also records that, despite earlier statutory provisions and reform recommendations, India lacked a formal and structured witness protection programme.[35] The objective of the Scheme is therefore preventive that is to ensure that investigation, prosecution, and trial are not prejudiced because witnesses are frightened or intimidated from assisting the criminal justice system.

A significant feature of the Scheme is its risk-based approach. Instead of treating all witnesses alike, it classifies them according to the nature and seriousness of the threat. Category A applies where the threat extends to the life of the witness or family members during investigation, trial, or thereafter. Category B covers threats to the safety, reputation, or property of the witness or family members. Category C applies where the threat is moderate and extends to harassment or intimidation of the witness or family members.[36] This classification is important because it recognises that witness vulnerability is not uniform. A witness facing a direct threat to life requires a different level of intervention from one facing reputational pressure or harassment. The Scheme thus attempts to allocate protective resources proportionately.

The institutional centre of the Scheme is the Competent Authority. The Scheme defines the Competent Authority as a Standing Committee in each district chaired by the District and Sessions Judge, with the head of police in the district as Member and the head of prosecution in the district as Member Secretary.[37] This structure is designed to combine judicial oversight, police assessment, and prosecutorial knowledge. The presence of the District and Sessions Judge gives the process a measure of independence and legal supervision, while the inclusion of police and prosecution authorities ensures access to information regarding threat perception

[33] *Mahender Chawla v. Union of India*, (2019) 14 SCC 615.
[34] Witness Protection Scheme, 2018.
[35] Id.
[36] Witness Protection Scheme, 2018, cl. 3.
[37] Id. cl. 2(c).

and the status of criminal proceedings.

The procedure under the Scheme begins with an application for protection. Such an application may be filed by the witness, family member, counsel, investigating officer, station house officer, sub-divisional police officer, jail superintendent, or prosecutor.[38] This wide access is significant because witnesses may not always be in a position to approach the authority personally, especially where the threat is immediate or where the witness is in custody. Upon receiving the application, the Competent Authority calls for a Threat Analysis Report from the police.[39] The Report assesses the nature, gravity, and source of the threat and recommends suitable protection measures. This report forms the practical basis for the protection order, although the final decision rests with the Competent Authority.

The Scheme provides a broad range of protective measures. These include ensuring that the witness and accused do not come face to face during investigation or trial, monitoring mail and telephone calls, installing security devices such as CCTV cameras and alarms, arranging security patrols, providing escort to and from court, and temporarily changing the witness's residence.[40] The Scheme also contemplates in-camera proceedings, use of specially designed vulnerable witness courtrooms, separate passages for witnesses and accused persons, and technological methods such as live video links, one-way mirrors, screens, and voice or face distortion.[41] These measures show that the Scheme recognises intimidation as both a physical and psychological phenomenon. Protection is not limited to guarding the body of the witness; it also includes reducing courtroom exposure, preventing identification, and minimising contact with the accused.

The Scheme further provides for identity protection and relocation in appropriate cases. It permits concealment of identity, use of changed names or alphabets, and measures to protect identifying details from disclosure. It also allows change of identity and relocation of the witness where necessary, including relocation within a State or Union Territory or elsewhere in India.[42] These provisions reflect the influence of earlier law reform discussions, especially the distinction between witness identity protection and broader witness protection programmes. Their inclusion is significant because in some cases the danger to the witness arises not merely

[38] Id. cl. 5.
[39] Id. cls. 2(j), 6.
[40] Id. cl. 7
[41] Id.
[42] Id. cls. 9–11.

from appearing in court, but from being identifiable to the accused or their networks.

Recognising that protection cannot operate without resources, the Scheme mandates the creation of a Witness Protection Fund. The Fund is intended to meet expenses arising from protection orders, relocation, security arrangements, and related measures.[43] It may receive budgetary allocations, court-imposed costs, donations, corporate social responsibility contributions, and other permitted sources. This funding mechanism reflects an important institutional insight: witness protection is not merely a legal declaration, but an administrative and financial responsibility.

Viewed collectively, the Witness Protection Scheme, 2018 is the most comprehensive witness protection framework developed in India so far. It brings together threat classification, judicially supervised decision-making, police-based risk assessment, identity protection, relocation, courtroom safeguards, and financial support. At the same time, the Scheme's architecture also reveals the questions that must guide its evaluation. Its effectiveness depends upon the quality of threat assessment, availability of funds, awareness among witnesses, and consistency of implementation across States. The Scheme is therefore a major institutional advance, but its real value depends on whether its protective architecture can operate effectively in the conditions of ordinary criminal justice administration.

VI. Evaluating the Effectiveness of the Witness Protection Scheme, 2018: Achievements, Challenges, and Limitations

The Witness Protection Scheme, 2018 represents a significant departure from India's historically fragmented approach to witness security. Its principal achievement lies in recognising witness protection as an institutional responsibility of the criminal justice system rather than as a matter of occasional judicial discretion or administrative convenience. By introducing threat categorisation, judicially supervised decision-making, police-based risk assessment, identity protection, relocation, courtroom safeguards, and a dedicated Witness Protection Fund, the Scheme creates a structured framework capable of responding to different degrees of witness vulnerability.[44] In this respect, it gives operational form to several concerns repeatedly identified by law reform bodies, particularly the need to move beyond a purely

[43] Id. cl. 4.
[44] Witness Protection Scheme, 2018, cls. 3–7.

reactive response to hostile testimony.

The Scheme's risk-based design is one of its strongest features. By classifying witnesses into Categories A, B, and C according to the seriousness of the threat, it recognises that witness vulnerability is not uniform.[45] A witness facing a direct threat to life requires a different degree of protection from one facing harassment, reputational pressure, or intimidation. This approach allows the Competent Authority to tailor protection measures to the facts of each case. The inclusion of identity protection, change of identity, relocation, separate courtroom arrangements, and technological safeguards also reflects a broader understanding of intimidation.[46] The Scheme does not treat protection merely as police security but it recognises that intimidation may operate through exposure, identification, repeated contact with the accused, and fear of retaliation.

However, these achievements do not eliminate the Scheme's structural limitations. A central concern lies in the Scheme's executive origin. Although the Supreme Court in *Mahender Chawla v. Union of India* directed that the Scheme would operate throughout India until appropriate legislation was enacted, the framework was initially brought into force through judicial approval of the present scheme.[47] This judicially approved status gave India its first nationally applicable structured mechanism for witness protection, but it also left important questions of uniformity, accountability, and implementation dependent upon administrative action. Section 398 of the Bharatiya Nagarik Suraksha Sanhita, 2023 now gives statutory recognition to witness protection by requiring State Governments to prepare and notify witness protection schemes.[48] Nevertheless, the practical effectiveness of protection continues to depend upon the content of state schemes, availability of resources, institutional coordination, and actual implementation at the district level.

A second limitation concerns the reliance on police-generated Threat Analysis Reports. The Threat Analysis Report is central to the functioning of the Scheme because it assesses the nature, gravity, and source of the threat and influences the protection measures granted.[49] Police involvement may be necessary in matters concerning security assessment, but excessive dependence on police evaluation may raise concerns of independence and witness confidence.

[45] Id. cl. 3.
[46] Id. cls. 7, 9–11.
[47] *Mahender Chawla v. Union of India*, (2019) 14 SCC 615.
[48] Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, § 398.
[49] Witness Protection Scheme, 2018, cls. 2(j), 6.

This concern becomes more serious in cases involving politically influential accused persons, organised crime, local power structures, or allegations of police inaction. In such situations, witnesses may be reluctant to trust a process in which the initial assessment of threat depends substantially upon the same local enforcement machinery from which they expect protection.

The Scheme also faces practical challenges of awareness and accessibility. A witness protection framework can function effectively only if witnesses, prosecutors, police officers, and courts recognise when protection is required and act before intimidation produces hostility. Although the Scheme requires wide publicity and obliges authorities to inform witnesses about its availability, the absence of a strong monitoring mechanism makes compliance difficult to assess.[50] This is significant because many witnesses, particularly those from rural, marginalised, or economically vulnerable backgrounds, may not know that protection can be requested. If the Scheme is invoked only after threats become visible or after witnesses begin withdrawing from the prosecution, its preventive function is weakened.

Funding is another important concern. The Scheme creates a Witness Protection Fund to meet expenses arising from protection orders, relocation, security arrangements, and related measures.[51] However, the practical value of the Fund depends upon adequate budgetary allocation, administrative commitment, and timely availability of resources. Without reliable funding, measures such as relocation, safe accommodation, escorts, technological safeguards, and emergency support may be difficult to implement consistently. The issue is therefore not merely whether the Scheme provides for a fund, but whether the fund can sustain meaningful protection in practice.

The Scheme is also limited in relation to long-term support. It provides for immediate and case-specific protective measures, including relocation and financial aid in appropriate cases.[52] However, witness vulnerability may continue after deposition or even after conclusion of trial, especially in cases involving organised crime, sexual offences, communal violence, or powerful accused persons. Relocation may also produce economic hardship, disruption of education, loss of employment, and social isolation. The Scheme recognises some of these concerns, but it does not create a detailed rehabilitative model for witnesses whose lives are

[50] Id. cl. 12.
[51] Id. cl. 4.
[52] Id. cls. 7, 11.

substantially altered because they cooperated with the criminal justice system.

A further limitation concerns emerging forms of intimidation. The Scheme contains provisions for identity protection and prevention of disclosure, but it does not create a detailed framework for responding to digital threats such as online harassment, social media intimidation, or circulation of identifying information.[53] This gap is increasingly important because witness exposure may occur not only in courtrooms, police stations, or local communities, but also through digital platforms.

Accordingly, the Witness Protection Scheme, 2018 should be viewed as an important beginning rather than a complete solution. It has succeeded in establishing witness protection as a recognised institutional responsibility and in creating the first nationally applicable structured framework for protection. However, its continued dependence on state-level implementation, police-centred risk assessment, uncertain funding, limited awareness, inadequate long-term support, and insufficient attention to digital threats demonstrate that the challenge of witness protection extends beyond the creation of formal safeguards. The Scheme addresses many symptoms of witness intimidation, but its ability to eliminate the structural conditions that produce witness hostility remains uncertain.

VII. Conclusion

The development of witness protection in India demonstrates a persistent gap between institutional recognition and effective implementation. For decades, law reform bodies, policy institutions, and courts acknowledged that witness intimidation undermines criminal trials, contributes to hostile testimony, and weakens public confidence in the administration of justice. However, these concerns were not immediately translated into a comprehensive protection framework. The Witness Protection Scheme, 2018 therefore represents not a sudden innovation, but a delayed institutional response to a problem long recognised within the Indian criminal justice system.

This paper has argued that witness hostility should not be understood merely as an evidentiary defect or as a question of individual credibility. In many cases, hostile testimony reflects the failure of the legal system to protect witnesses from intimidation, coercion, retaliation, social pressure, and economic vulnerability before they enter the courtroom. A procedural response,

[53] Id. cls. 7, 9.

such as cross-examination of a hostile witness, may assist the court after retraction, but it cannot address the fear that produced the retraction. Witness protection must therefore be understood as a preventive requirement of fair criminal adjudication.

The Witness Protection Scheme, 2018 marks an important advance by introducing threat categorisation, judicially supervised decision-making, Threat Analysis Reports, identity protection, relocation, courtroom safeguards, and a Witness Protection Fund. It establishes witness security as a recognised institutional responsibility. Nevertheless, the Scheme remains constrained by its judicially approved origin, dependence on state-level implementation, reliance on police-generated threat assessment, dependence on adequate state-level funding, limited awareness, inadequate long-term support, and insufficient attention to digital forms of intimidation.

Accordingly, future reform must strengthen the statutory and institutional foundations of witness protection, ensure greater independence in threat assessment, provide adequate funding, and include post-trial rehabilitation and digital safeguards. Ultimately, witness protection is not a peripheral welfare measure. It is central to truthful testimony, fair trial, and the legitimacy of criminal justice. A system that depends upon witnesses must also possess the capacity to protect them.