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## **CHALLENGES AND PROSPECTS OF THE WITNESS PROTECTION: A COMPARATIVE STUDY**

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### **ABSTRACT**

The Article centers on a comprehensive comparison of the Witness Protection Programs (WPPs) in five different jurisdictions: India, United States, United Kingdom, South Africa, and Australia in terms of legal frameworks, administrative structures, and operational methods. Different approaches are revealed by the study, such as the strong, identity-changing model of the U.S. Witness Security Program (WITSEC) and the Australian National Witness Protection Program (NWPP). Furthermore, it scrutinizes the more procedural systems in the UK and South Africa. The study wraps up with recommendations for India. Among these are setting up a National Witness Protection Act to establish a dedicated and empowered agency, tapping technology with video conferencing and secure witness portals, providing extensive witness assistance programs, and enacting judicial reforms to lessen delays. India would, therefore, not only deal with its own problem but also come closer to the global goal of the justice system where fear is not a barrier to the truth.

## INTRODUCTION

Section 124 of the Bharatiya Sakshya Adhiniyam, 2023 specifies the competency of “witnesses” who are to be heard in court. It establishes two conditions that must be met for determining a witness's competency. The witness is able to understand the questions posed to him and respond to them in a reasonable manner. Nevertheless, the court may rule that the witness in question is incompetent if it deems that the witness fails to meet either of two requirements due to being very young or very old, ill, deaf or dumb, or any other reason of the same nature.<sup>1</sup>

According to Black’s Law Dictionary: “One who sees, knows or vouches for something or one who gives testimony under oath or affirmation in person or by oral or written deposition or by affidavit”<sup>2</sup>.

According to Oxford Dictionary: “One who gives evidence in a cause: and in different person to its party, sworn to speak the truth, the whole truth and nothing but the truth.”<sup>3</sup>

Witnesses are the foundation of the legal system. They are individuals who observe a criminal act and then go to court to give the judge an account of their observation. Their honesty is the strongest proof. Since witnesses are so crucial in the justice process, they sadly become the first ones to suffer from intimidation. Protecting them isn't an extra service. The entire foundation of a trial depends on their testimony. Their declarations are crucial, in revealing the truth and ensuring convictions<sup>4</sup>.

The effectiveness of any criminal justice system largely hinges on witnesses being willing to step up and tell the truth in court. If witnesses lack a sense of safety or confidence the entire justice framework becomes fragile as numerous cases rely on their testimony to be established. Witnesses form the foundation of a criminal justice system. However, due to threats and risks numerous witnesses hesitate to step or provide honest testimony. To guarantee that justice prevails it is essential to create an environment where witnesses feel secure honored and aided.

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<sup>1</sup> Bharatiya Sakshya Adhiniyam, 2023, s. 124.

<sup>2</sup> *Black's Law Dictionary* (11th edn., Thomson Reuters, St. Paul 2019) 1835.

<sup>3</sup> *Oxford English Dictionary* (3rd edn., Oxford University Press, Oxford 2010) s.v. “Witness”.

<sup>4</sup> K. I. Vibhute, *Criminal Justice: A Human Rights Perspective of the Criminal Justice Process in India* (LexisNexis Butterworths, New Delhi 2004).

Enhancing witness protection. Both through legislation and in practice. Is thus crucial to rebuild confidence in our judiciary and to ensure that truth triumphs, over intimidation.

To address this issue, several countries have established structured Witness Protection Programmes (WPPs) to ensure the safety of witnesses and their families, thereby enabling them to testify without fear. This project undertakes a comparative study of witness protection mechanisms in India, the United States, the United Kingdom, and South Africa<sup>5</sup>.

### **Adversarial Witnesses**

A hostile witness is a witness who opposes the party calling and refuses to reveal the truth that the caller wishes to know. The law permits the calling party's attorney to request authorization from the judge to cross-examine their own witness in such a situation. This means that the attorney can question their own witness in the same way that they would a witness from the other side. They will be permitted to ask questions designed to show that the witness is lying or changing their story<sup>6</sup>.

### **Typical Causes of Witnesses Becoming Enraged**

One of the biggest issues facing the criminal justice system is witnesses becoming hostile. Typical causes of this include:

- **Threats and intimidation:** The accused frequently intimidate or coerce witnesses, particularly if the accused is strong or influential.
- **Bribes and Inducements:** To persuade a witness to alter their statement, the accused may offer them cash or other advantages.
- **System Delays and Harassment:** Witnesses may get irate and reluctant to cooperate due to protracted trial delays and the way they are occasionally handled in court.
- **Lack of Safety:** A significant problem is the absence of robust procedures for protecting witnesses, which makes them fearful and open to retaliation.

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<sup>5</sup> United Nations Office on Drugs and Crime, *Good Practices for the Protection of Witnesses in Criminal Proceedings* (2008).

<sup>6</sup> Indian Evidence Act, 1872, s. 154

The hostile witness is not always valuable. It is still up to the court to determine what to believe. The judge may decide to disregard the remainder of the witness's statement and only accept the portions that sound credible and true. Therefore, the witness's remarks are not entirely worthless even if they are being challenging<sup>7</sup>.

Declaring a witness “hostile” is a unique exception to the standard court procedures since the witness was first called by one side to bolster its case. The first step is for the attorney representing the side that called the witness to ask the judge to formally declare the witness hostile<sup>8</sup>.

### **India's Witness Protection System**

In essence, India's criminal justice system relies on witnesses to uncover the truth and administer justice. Because he has the power to determine whether an offender is guilty or innocent, the witness is the foundation of criminal litigation. Ironically, in Indian criminal justice, a witness is one of the most overlooked components of the entire legal system. The witness is frequently subjected to threats, intimidation, temptation, social pressure, and hardship, which makes them hesitant to come forward or hostile. Therefore, one of the primary causes of the low conviction rate, especially in severe cases involving powerful defendants, has been the absence of a robust witness protection mechanism.<sup>9</sup>

In the past, the Indian legal system was predicated on the idea that witnesses would come forward and freely and bravely testify as a matter of accountability. The socioeconomic realities of Indian society, which puts witnesses at risk without official backing, was overlooked in this assumption. As a result, the need for a structured witness protection program has gradually gained acceptance in academic and legal circles. In Indian law, the issue of witness protection has evolved primarily through official initiatives and interpretation rather than through statutes.

Article 21 of the Indian Constitution, which guarantees the right to life and liberty, serves as the foundation for witness protection. Nonetheless, the Indian Supreme Court ruled that Article 21 is sufficiently broad to include both the right to a fair trial and the right to live in dignity. Lastly, a fair trial is crucial for both the accused and the witnesses and victims. Furthermore,

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<sup>7</sup> K.I. Vibhute (Ed.), *PSA Pillai's Criminal Law*, 14th ed. (LexisNexis, New Delhi, 2019) 1023–1026.

<sup>8</sup> Indian Evidence Act, 1872, s. 154

<sup>9</sup> Ratanlal & Dhirajlal, *The Law of Evidence* (27th edn., LexisNexis 2021) 112.

the idea of a trial itself is pointless if the witnesses are not protected from violence and intimidation. Additionally, the Indian Constitution's witness protection clause is strengthened by Article 39A, which grants access to justice, and Article 14, which guarantees equality before the law.<sup>10</sup>

Numerous significant instances have raised the issue of vulnerable witnesses in the Indian context. The Supreme Court ruled in *Zahira Habibulla Sheikh v. State of Gujarat* (2004), also known as the Best Bakery case, that witnesses are the “eyes and ears of justice” and that coercion and intimidation of witnesses will render the criminal justice system as a whole ineffective. This case marks a turning point in the Indian judiciary's recognition of the value of witness protection initiatives.<sup>11</sup>

Similarly, in *Sakshi v. Union of India* (2004), the Supreme Court acknowledged the traumatizing circumstances for vulnerable witnesses and victims of sexual cases and issued guidelines for holding the trial in front of judges and taking additional precautions to shield the witnesses from future abuse. This suggested that the conventional trial procedures put witnesses in a position of secondary victimization because of the severe confrontation and exposure.<sup>12</sup>

Despite the apprehension of the judiciary, legislative action was conspicuously absent. In its 154th Report (1996) and its 198th Report (2006), the Law Commission of India suggested that laws pertaining to witness protection be passed. The Commission emphasized how important witness protection is for both the witnesses' personal safety and the maintenance of the public's confidence in the rule of justice. The following factors were suggested for the witness protection aspect: identity concealment, witness relocation, in-camera proceedings, and harassment protection.<sup>13</sup>

*Mahender Chawla v. Union of India* (2018) is notably the most significant case pertaining to the Indian legal system's witness protection policy. In this sense, the Supreme Court acknowledged witness protection as a component of the Article 21 right to life. The Witness

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<sup>10</sup> *Maneka Gandhi v. Union of India*, AIR 1978 SC 597.

<sup>11</sup> *Zahira Habibulla Sheikh v. State of Gujarat*, (2004) 4 SCC 158.

<sup>12</sup> *Sakshi v. Union of India*, (2004) 5 SCC 518.

<sup>13</sup> Law Commission of India, *154th Report on the Code of Criminal Procedure, 1973* (1996); Law Commission of India, *198th Report on Witness Identity Protection* (2006).

Protection Scheme, 2018, which would be considered required under Article 141 of the Indian Constitution until the relevant legislation is passed by both Parliament and the state legislatures, was essentially upheld by the Supreme Court. This is in order to give witness protection a legal standing, which was previously at the administration's request.<sup>14</sup>

The first planned and logical attempt to formalize witness protection in India is the Witness Protection Scheme, 2018. The Scheme establishes a procedure for assessing the risks to witnesses and specifies the appropriate protection plan. The scheme classifies the witnesses into three groups based on the type of threat they face. Cases falling under Category A are those in which the witnesses' lives and the lives of their families are at danger. In Category B instances, the witnesses' personal property, safety, and reputation are at risk. Cases classified as Category C involve moderate degrees of harassment and threats.<sup>15</sup> Despite the Witness Protection Scheme, 2018's progressive design, there have been significant difficulties in its implementation. The absence of a distinct legislative entity at the national level is the first significant problem with this scheme. In contrast to the US and Australia, India lacks a distinct witness protection organization manned by competent individuals with autonomous functional capabilities. The current police system, which is already overworked and occasionally susceptible to local pressure, is heavily relied upon by the scheme.<sup>16</sup>

The lack of sufficient finance is another significant shortcoming. The majority of the time, states have not made enough contributions to the Witness Protection Fund, which renders protection agreements useless. In these situations, protective preparations are either insufficient or made too late, and witness protection is only theoretical. Additionally, States' execution of the Scheme is inconsistent, which undermines its credibility. Witnesses in the Indian legal system are likewise becoming more vulnerable due to procedural delays. Criminal trials can take years, and witnesses must appear in court several times. They are more likely to experience intimidation or harassment each time they appear in court. The Supreme Court ruled in *Vinod Kumar v. State of Punjab* (2015) that lengthy trials and frequent adjournments are major causes of hostile witnesses.<sup>17</sup>

State parties are required by the 2000 United Nations Convention Against Transnational

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

<sup>15</sup> Witness Protection Scheme, 2018, para 2.

<sup>16</sup> Abhinav Sekhri, *Witness Protection in India: Problems and Prospects*, (2019) 3 SCC (J) 25.

<sup>17</sup> *Vinod Kumar v. State of Punjab*, (2015) 3 SCC 220.

Organized Crime to provide sufficient protections for witnesses against intimidation or persecution. Once more, the 1985 UN Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power highlights the significance of impartiality, protection, and assistance while dealing with witnesses. The Indian government has only partially impacted the witness protection clause because it is a signatory to the aforementioned UN documents. Effective law is the key to enhancing witness protection programs in India. The National Witness Protection Act's passage will aid in the establishment of an accountable, uniform legal system that includes a witness protection agency. Technology can help improve security. Examples of these are Faceless Witness Systems and secure online deposition systems. Beyond security concerns, rehabilitation, financial assistance, and psychological support can enhance witness protection.<sup>18</sup>

### **The United States' Witness Protection System**

The United States is thought to have the best witness protection program in the world. It is incredibly powerful and well-structured. The Witness Security Program (WITSEC) is the program's official name. It was founded in 1970 primarily to combat organized crime, including the mafia. The U.S. Marshals Service, one of the country's oldest law enforcement organizations, is in charge of it<sup>19</sup>. The Witness Security Program, also known as the Witness Protection Program, is run by the U.S. Marshals Service and protects governmental witnesses and their families when their lives are in danger as a result of their cooperation with the federal government against specific criminals, including terrorists, drug traffickers, and members of organized crime groups. The Organized Crime Control Act of 1970 first approved this program, and the Comprehensive Crime Control Act of 1984 made certain improvements. Since its founding in 1971, it has relocated and safeguarded more than 19,250 witnesses and their families.<sup>20</sup> Along with housing support, basic living expenses, and medical care, this program provides witnesses and their families with new identities. To start over, job training and employment support may be offered. When witnesses are in danger, especially during court appearances, trials, or meetings with prosecutors, the U.S. Marshals Service provides them with round-the-clock protection. Crucially, no witness who followed the program's guidelines

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<sup>18</sup> United Nations Convention against Transnational Organized Crime, 2000, Art. 24; UNGA Res. 40/34 (1985).

<sup>19</sup> Peter Finn, *Witness Protection in the United States* (National Institute of Justice, Washington DC 1989).

<sup>20</sup> Organized Crime Control Act, 1970, Pub L No 91-452; Comprehensive Crime Control Act, 1984, Pub L No 98-473.

has ever been killed or injured while receiving protection.<sup>21</sup>

The U.S. Attorney, the U.S. Marshals Service, the Department of Justice's Office of Enforcement Operations, and the investigating law enforcement agency with jurisdiction over their case thoroughly screen and approve any prospective witness before they are admitted into the program.<sup>22</sup> In the U.S. government's battle against terrorism, drug trafficking, and organized crime, the Witness Security Program is regarded as a potent and effective weapon. The U.S. Marshals Service is now recognized as a global authority on witness protection, and officials from other nations have been receiving training from them on witness protection for many years.<sup>23</sup>

Giving high-risk witnesses and their families a new identity is the fundamental goal of WITSEC. It is a permanent position rather than a transient one.<sup>24</sup> This includes:

- New names, birth certificates, identity cards, and social security numbers are supplied to the witness and their family members. They seem to be brand-new.
- In order to keep criminals from accessing them, they are moved to a remote area in a different state.
- Until they are able to support themselves independently, the government gives them a new place to live, money to survive, and assistance finding work.
- The Marshals Service provides them with round-the-clock protection, particularly during their trial.<sup>25</sup>

## Justice Department

The main goal of the Department of Justice's (DOJ) Witness Security Program, which is run under the Witness Security Reform Act of 1984, is to protect important witnesses and their

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<sup>22</sup> Gerald Shur & Pete Earley, *WITSEC: Inside the Federal Witness Protection Program* (Bantam Books, New York 2002).

<sup>23</sup> U.S. Marshals Service, *Witness Security Program: History and Mission* (US Department of Justice).

<sup>24</sup> Alexandra Natapoff, *Snitching: Criminal Informants and the Erosion of American Justice* (New York University Press, New York 2009).

<sup>25</sup> Organized Crime Control Act, 1970, Pub L No 91-452; Comprehensive Crime Control Act, 1984, Pub L No 98-473.

families from threats, violence, or retaliation in order to help the government prosecute crimes like drug trafficking and organized crime.<sup>26</sup>

This safeguard guarantees the continued effectiveness and fairness of the legal system. The following are the primary goals of the program:

- **Safeguarding witnesses:** This program provides long-term security and safe relocation to witnesses whose lives are at risk due to their testimony in criminal trials, particularly those involving organized crime, terrorism, drug trafficking, or other significant federal or state offenses.<sup>27</sup>
- **Careful Selection and Risk Assessment:** The DOJ evaluates a witness's importance, dependability, and threat level before admitting them into the program. In addition, it discusses their background and sanity to ensure that they won't cause issues in their new community.<sup>28</sup>
- **Centralized Supervision:** All program entries are directed and approved by the Office of Enforcement Operations (OEO). Additionally, it manages requests to use witnesses who are already under the U.S. Marshals Service's custody.<sup>29</sup>

Federal Bureau of Prisons (BOP) or U.S. Marshals Service. This would offer comparable regulations and strict security in every situation, but with more stringent security protocols.<sup>30</sup>

- Acquiring the relocation addresses and keeping them confidential.
- All correspondence via OEO or USMS with the relocated witnesses.
- Making each witness sign a document outlining their obligations as well as those of the Marshals Service.

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<sup>26</sup> Witness Security Reform Act, 1984, Pub L No 98-473; U.S. Department of Justice, *Justice Manual*, § 921.000 (Witness Security)

<sup>27</sup> Organized Crime Control Act, 1970, Pub L No 91-452; Peter Finn, *Witness Protection in the United States* (National Institute of Justice, Washington DC 1989).

<sup>28</sup> Gerald Shur & Pete Earley, *WITSEC: Inside the Federal Witness Protection Program* (Bantam Books, New York 2002).

<sup>29</sup> U.S. Department of Justice, *Justice Manual*, 9-21.130 (Authority of the Office of Enforcement Operations).

<sup>30</sup> U.S. Marshals Service, *Witness Security Program: Operations and Procedures* (US Department of Justice).

- Security and safe transportation when going to court.
- Responsible Use of Protected Persons: To ensure their safety and the program's security, OEO clearance is needed if a protected witness or former participant is later utilized as an informant.<sup>31</sup>

### **Australia's Witness Protection System**

The state and territory police departments support the initiative to ensure its effectiveness. This is crucial because it ensures that dangers, both local and national, are effectively addressed. The NWPP, or National Witness Protection Program. The Witness Protection Act, 1994, which created the National Witness Protection Program (NWPP), was drafted by the Australian Parliament in response to a parliamentary inquiry conducted in 1988.<sup>32</sup>

The law further stipulates that the AFP must provide a yearly report to the parliament with the primary objective of ensuring that protected individuals are safely integrated into society while maintaining the program's confidentiality and safety. The Australian Federal Police's (AFP) senior-level Witness Protection Committee oversees the National Witness Protection Program (NWPP), identifying both those who should be protected under the program and those who should be discontinued. A Coordinator manages the program's day-to-day operations. The NWPP's main objective is to safeguard witnesses involved in major situations like drug trafficking and organized crime so they won't be afraid to testify in court.<sup>33</sup>

Furthermore, the Act contains a robust confidentiality protection system that makes it illegal to reveal protected information, such as maintaining a sealed list of participants. Additionally, the Act contains a process that safeguards the authenticity of official identity cards by requiring enabling legislation in a state or territory prior to the issuance of such documents. The primary initiative, known as the National Witness Protection Program, was created under the Witness Protection Act of 1994 and is run by the Australian Federal Police (AFP). It seeks to guarantee that people who are courageous enough to testify against dangerous offenders can do so without worrying about their own or their family's safety.

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<sup>31</sup> Alexandra Natapoff, *Snitching: Criminal Informants and the Erosion of American Justice* (New York University Press, New York 2009).

<sup>32</sup> Witness Protection Act 1994 (Cth); Commonwealth of Australia, *Parliamentary Joint Committee on the National Crime Authority, Witness Protection* (1988).

<sup>33</sup> Australian Federal Police, *National Witness Protection Program: Guidelines and Overview* (AFP, Canberra).

Nature of protection given by Australian Federal Police:

- It can be utilized to provide physical security around-the-clock.
- In situations where there is an urgent threat, emergency protection measures will involve putting them in safe houses and assigning close personal guards.
- It is possible to give witnesses and their close relatives a completely new identity.
- They obtain new official documents, such as birth certificates, driver's licenses, tax records, and health cards, which enable them to vanish into an entirely new existence in which no one can find them.
- It is possible to give witnesses and their close relatives an entirely new identity.
- They receive new official documents, including a birth certificate, driver's license, tax file, and health card, which enables them to begin their new life covertly.

For their safety, the witness protection may be moved to a different area of Australia or even overseas. They have relocated to new areas where it is difficult to trace their history. When the witness gets work and adjusts to their new life, the government may occasionally be able to continue providing funding. This support could include giving kids a place to live, a means of subsistence, job training, and education.<sup>34</sup>

### **Witness Protection in United Kingdom**

The UK Protected Persons Service (UKPPS), a specialized division of the National Crime Agency (NCA), is the main source of resources for the country's extensive witness protection system. Although protecting witnesses in significant criminal prosecutions is the UKPPS's primary focus, it also protects those who are seriously in danger, such as victims of honorbased violence. The system, which is supported by a framework of court-based programs and specialized support services, encompasses everything from basic security improvements to relocation and the creation of a completely new identity.<sup>35</sup>

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<sup>34</sup> United Nations Office on Drugs and Crime (UNODC), *Good Practices for the Protection of Witnesses in Criminal Proceedings* (United Nations, Vienna 2008).

<sup>35</sup> National Crime Agency, *UK Protected Persons Service (UKPPS): Overview and Functions* (NCA, London).

The UKPPS is the primary mechanism in Great Britain for safeguarding individuals who are in grave danger due to their role as witnesses. It was started in 2013 with the intention of standardizing the witness protection procedure across the nation. In the past, local police handled these crimes on their own, but the UKPPS unified everything under a single national organization. In addition to working under the NCA, the UKPPS cooperates with regional police departments to safeguard witnesses. It is mostly involved in murder, organised crime, and terrorism situations if the witness or their family is seriously threatened.<sup>36</sup>

Witnesses may ask for “Special Measures” to make testifying more comfortable under the Youth Justice and Criminal Evidence Act of 1999. These include utilizing screens to prevent the witness from seeing the accused, allowing a video-recorded interview to be used as their primary statement in court, and enabling the witness to testify via a live video link from another room. The court may also loosen formal norms to make the process less stressful. For instance, judges and attorneys may take off their wigs and gowns, or the hearing may be held in private with the public excluded.<sup>37</sup>

The Coroners and Justice Act of 2009 allow the court to issue a Witness Anonymity Order in extremely serious circumstances. This implies that a witness may testify without disclosing their identify to the public or even the accused, provided that doing so does not compromise the accused's right to a fair trial. By imposing reporting restrictions, courts can also prevent the media from disseminating information that could identify the witness. They may also utilize their customary authority to maintain the confidentiality of the witness's name and address in court documents. From the time a suspect is accused until the trial is over, the Witness Care Units, which are jointly operated by the police and CPS, look after the welfare of the victims and witnesses. Additionally, all witnesses in criminal courts in England and Wales can receive free counsel, assistance, and information from the independent Citizens Advice Witness Service. This service helps witnesses be ready for court processes, pre-trial court visits, and having a support partner on trial day to help them get over their anxiety and phobias. In the UK, witnesses in court proceedings are subject to specific legal rules.<sup>38</sup>

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<sup>36</sup> Home Office, *Serious and Organised Crime Strategy* (UK Government, London).

<sup>37</sup> Youth Justice and Criminal Evidence Act 1999 (UK) ss 16–33.

<sup>38</sup> Coroners and Justice Act 2009 (UK) ss 86–97.

## Witness protection system in South Africa

The Witness Protection Act of 1998 is a piece of legislation. This specific statute established a witness care office. The National Prosecuting Authority (NPA) is the organization that oversees this specific office. The office's primary responsibility is to protect witnesses and their families from injury, intimidation, and threats. This specific process makes court proceedings run more smoothly and fearlessly.<sup>39</sup>

The Department of Justice and Constitutional Development, the most well-known legal department in the South African government, includes the Office for Witness Protection. A Director-General is in charge of the department and the office. OWP is closely associated with the National prosecuting Authority (NPA), which is in charge of pursuing criminal cases on behalf of the state, while being a part of the government's legal system.<sup>40</sup>

- The “Witness Protection Act, 1998” which gave the OWP legal authority as a recognized office, is a unique law that regulates its services. This statute allows the OWP the power to temporarily safeguard a specific witness until it determines if long-term protection is necessary.
- The OWP offers witnesses and their families complete support before to, during, and following a trial. Giving witnesses and family members new identities and documents, relocating them to a secure area, and offering financial support to help them begin a new life are all examples of the support.
- In contrast, the OWP has a global reach. It can work with other countries to protect both South African witnesses involved in international court matters and foreign witnesses who come to South Africa to testify. This has the effect of improving the OWS by introducing best practices from around the world.

The willingness of witnesses to come forward and tell the truth in court is crucial to the effectiveness of any criminal justice system. Because many cases cannot be established without witnesses, the entire legal system is weak when the witnesses themselves feel unsafe. It has been acknowledged that witnesses in India are in a very precarious position. The accused and

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<sup>39</sup> Witness Protection Act 112 of 1998 (South Africa).

<sup>40</sup> Department of Justice and Constitutional Development, *Annual Report*.

other powerful individuals who are unwilling for the truth to be revealed may put pressure on them, threaten them, or even use violence. As a result, several witnesses have grown antagonistic, withdrew, or altered their testimony out of fear.<sup>41</sup>

### **OTHER INTERNATIONAL STANDARDS:**

Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power The text of the Declaration was prepared during the Sixth and Seventh Congresses on the Prevention of Crime and the Treatment of Offenders, in accordance with a decision made by the Committee on Crime Prevention and Control. The General Assembly adopted the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power on November 29, 1985.<sup>42</sup> The United Nations Secretary-General drafted the Declaration and sent it to the Committee in 1984. The Seventh Congress delivered a draft of the Declaration to the General Assembly in 1985 following a number of regional consultations and expert conferences. On November 29, 1985, the General Assembly approved the Declaration as an appendix to resolution 40/34. The two parts of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power are “Victims of Crime”, which includes articles on “Access to justice and fair treatment”, “restitution”, “Compensation” and “Assistance” and “Victims of abuse of power.”<sup>43</sup>

The three Protocols of the United Nations Convention Against Transnational Organized Crimes of 2000: “State parties are required to take appropriate measures to ensure that there are effective safeguards against potential reprisals or intimidation for witnesses in a criminal case who testify on crimes falling under the scope of the Convention (money laundering, corruption, trafficking in persons, smuggling of migrants, etc.), as well as for persons close to them.”<sup>44</sup>

### **Obstacles for Witnesses**

Although the system always expects witnesses to tell the truth, there are instances when the system does not create an environment that is favorable for them to do so. The difficulties they face are numerous and profound, including threats, social exclusion, and the significant

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<sup>41</sup> *Zahira Habibullah Sheikh v State of Gujarat* (2004) 4 SCC 158.

<sup>42</sup> United Nations, *Report of the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders* (Caracas, 1980);

<sup>43</sup> United Nations Office on Drugs and Crime (UNODC), *Handbook on Justice for Victims* (United Nations, New York 1999).

<sup>44</sup> United Nations Convention against Transnational Organized Crime, 2000, adopted 15 November 2000, entered into force 29 September 2003.

financial burden of a protracted trial.

### **1. Fear of Intimidation and Physical Danger**

The witnesses' greatest dread is this. Witnesses and their families are intimidated or even hurt in instances involving powerful individuals, politicians, and criminals. The goal is to intimidate them into staying silent or giving a different testimony in court. After then, the witness is referred to as a “hostile witness.” In the case of *Zahira Habibulla H. Sheikh v. State of Gujarat*, the Supreme Court referred to this issue as a “phantom “issue. Evidence destruction is a “ghost that haunts the criminal justice system”, according to the Supreme Court.<sup>45</sup>

### **2. Long Delays and Frequent Adjournments**

The Indian legal system is renowned for its glacial pace of development. In a single court, a lawsuit can take ten, fifteen, or even twenty years to resolve. Imagine now that a witness has been called to testify in court. The defense lawyer asks for an adjournment, but the witness shows up when called. The witness is sent back with instructions to return another day once the judge gives his or her approval. For a government employee, a shopkeeper, or a daily wage worker, missing one day of work to attend a trial would result in the loss of an entire day's earnings. This sum would be a significant financial setback over time.

The judiciary has often offered commentary on this issue. The Supreme Court noted in a landmark case, *Vinod Kumar v. State of Punjab* (2015), that witnesses refusal to cooperate with the prosecution is mostly due to needless delays that occasionally occur. Here, the Supreme Court has made a very important observation. “A witness's time is as precious as the court's time” the court declared.<sup>46</sup>

### **3. Harassment during cross examination**

During cross-examination, a defense lawyer challenges a prosecution witness. However, this can occasionally come across as quite abusive and nasty. During cross-examination, attorneys can be very antagonistic. Attorneys may ask irrelevant, embarrassing, and even private questions to mislead, intimidate, and frustrate a witness. This is known as “secondary

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<sup>45</sup> *Zahira Habibullah Sheikh v State of Gujarat* (2004) 4 SCC 158

<sup>46</sup> *Vinod Kumar v State of Punjab* (2015) 3 SCC 220.

victimization” which indicates that a witness is subjected to suffering as a result of the legal proceedings rather than the crime.

Legal protection: Sections 151 and 152 of the Evidence Act of India give the judge the authority to stop such pointless and disparaging questions. In order to give the defendant a fair chance to defend himself, judges typically allow very extensive cross-questioning. A testimonial's experience For the witnesses, such events are incredibly traumatizing. Witnesses frequently experience such trauma that they decide not to participate in any future legal proceedings.

#### **4. Lack of Basic Facilities and Dignity**

Witnesses are frequently not given the respect they merit. It is a reality that there isn't a designated waiting place for witnesses when they arrive in court. Sometimes they are made to wait for hours in a crowded, sweltering hallway while standing. They have no one to guide them or inform them when it is their turn to testify. They are typically handled as though they have little bearing on the lawsuit. Such negligence is a blatant sign of disregard for witnesses. It makes sense that individuals would be less inclined to support the legal system when they are treated with disrespect and lack of dignity.

#### **5. The Flawed System of Witness Protection**

Although India has a Witness Protection Scheme (2018), there are many obstacles along the way. This is a really good initiative. In the *Mahendra Chawla v. Union of India* (2018)<sup>46</sup> case, the Supreme Court upheld this. Depending on the degree of danger to the witness, it has divided protection into three phases.

Challenges in Practice.

- Insufficient financial resources: The state governments have not allocated sufficient finances to carry out this strategy.
- Insufficient Training: Witness protection is not part of the police's training.
- The burden of a lot of paperwork: A witness must do a lot of paperwork, which takes a long time, in order to obtain protection.

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<sup>46</sup> *Mahender Chawla v Union of India* (2019) 14 SCC 615.