



A Probe of Laws Relating to Witness Protection in India

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ABSTRACT

In any democratic society, the criminal justice system relies profoundly on the readiness of witnesses to step forward and tender testimony in the court proceeding. An objective of the Bhartiya Sakshya Adhiniyam (BSA) is nothing but a uncompromising mandate to ensure fair trial. Fair trial can be attainable if the reliable and best quality of evidence particularly oral testimony of the witness came before the court. In India, however, this basic requirement faces considerable challenges. How can witness be protected from pressure and other unethical practices posed challenge to us as witnesses are often subjected to intimidation, threats, and even violence. Hence, they are more or less unwilling to give testimony before the court. The unwillingness of the witnesses affects the integrity of justice. This culminates in acquitting or discharging the defendant on some technical ground or on lack of evidence. There is an urgent need to make justice protective of persons who are willing to take a chance in order to provide testimony in the court. Beginning of the Witness Protection Scheme in 2018 was hailed as the major turning point in India's strategy to develop an ambience conducive to securing the witness. This major milestone has been achieved as the response to the landmark judgments by the Indian judiciary in various matters related to either witnesses turning hostile or encountering extraordinarily harsh results. The Witness Scheme has also made its appearance as Section 398 in the Bharatiya Nagarik Suraksha Sanhita 2023, mandating all state administrations to devise ways to protect witnesses. In this backdrop, it has been tried to evaluate and analyse the development, implementation, and continuing challenges related to witness protection mechanisms in India. It

focuses on vital legal instruments such as the 2018 Witness Protection Scheme, relevant judicial decisions, and the protective provisions introduced under Section 398 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023. This paper also examines fresh efforts such as the Witness Protection Bill, 2023, and regional initiatives from Delhi, Uttar Pradesh, and Goa.

KEY WORDS

Witness, Protection, Hostile, Legal Reforms, Criminal Justice System, Bharatiya Nagarik Suraksha Sanhita 2023.

INTRODUCTION

Witnesses are indispensable to the success of any justice delivery system. They are eye and ear of justice as opined by famous jurist Bentham. Though, the advancements in technology have led noteworthy contribution in innumerable types of evidences. But the relevance of witnesses has always been in high esteem. The vulnerability of security of witness caused hostility and which ultimately result into low rate of conviction. A low conviction rate is the reason of erosion of public confidence in the system. The widespread issue of witnesses' reluctance to depose before the court and menace of hostility of witness have been regularly faced by the court. The problem is so critical that the Supreme Court has identified it as a "major disturbing factor" continues to disrupt the judicial process, even with protection measures in place.¹ The federal structure of governance in India further obscures witness protection. While police and public order fall under state jurisdiction, criminal law is a concurrent responsibility, leading to unpredictability in how protection measures are applied across the country.

The prominence of ensuring effective witness protection is extended far beyond individual cases; broader issues of the rule of law, democratic governance, and social justice are touched on. When the witnesses cannot testify without fearing retribution, reluctance will be experienced by them, which will result in the erosion of the very basis of justice afforded to the victims.

In '*State of Punjab v. Gurmit Singh*²', the Supreme Court emphasized that providing adequate protection to witnesses and victims during the inquiry or trial process creates a safer and more supportive environment for them to testify freely. The in-camera proceedings creates comfortable situation during rape trials as it offers the prosecutrix a opportunity to present her testimony without any kind of fear or embarrassment. It would be fostering a more comfortable setting for her to speak openly. In '*State of Gujarat v. Anirudh Singh* (1997)³', the Supreme Court mandated that that every citizen who possesses with knowledge of a crime must discharge their duty to help in administration of justice

Law Commission Reports and Witness Protection Scheme

1. Law Commission Reports

In 1958, the 14th Law Commission Report⁴, titled *Reforms of Judicial Administration*, was the first discourse which aimed to develop measure for protecting witness's interest. The range of the discourse was restricted to addressing only the pecuniary facets of witness protection, leaving out other fundamental forms.

*The 154th Law Commission Report*⁵, published in 1996 which has a specific chapter focused entirely on the "Protection and Facilities to Witnesses". It accredited that the lack of adequate witness protection and cited such inadequacy as a reason escape of criminals from conviction. The Law Commission recommended that the allowances payable to the witnesses for their attendance in courts should be fixed on a realistic basis. In order to avoid delay and inconvenience, the payment to witness should be made through a simple procedure. The witness should be provided adequate stay and other facilities, proper treatment and they must be safeguarded from ire of the accused. Confidence creation is also substantial. The report underlined the significance of witness protection so as encourage confidence to witness to testify before court. The Commission pointed out

difficulty faced by witnesses due to adjournment and recommended the avoidance of adjournment and favoured summon and examination on a single day or continuously. It was expected that a circular for the said purpose may be issued by the High Court.

*The 178th Law Commission Report*⁶, published in 2001, addressed the issue of “hostile witnesses” and the need for fair investigations and keeping integrity of witness intact. It underlined the problematic area of witness hostility and recommended to insert section 164-A to CrPC as measure to ensure fair investigation wherein accused are influential. It was suggested as it require from police to record statements from main witnesses before a Magistrate at the start of an investigation. This measure was suggested especially in cases involving serious offences punishable by ten or more years in prison or the death penalty.

The most celebrated committee on Criminal Justice System Reforms report is popular as the *Justice Malimath Committee Report*.⁷ The committee had made several recommendations to address the urgent need for witness protection to improve conviction rates and deliver justice. The threats faced by witnesses and their families were highlighted by the report, often leading to intimidation, injury, or even murder before they can testify. It was emphasized that witnesses would not come forward without assurance of protection, such as anonymity or physical disguise.

Measures should be instituted at the maximum level by the court to protect and keep witnesses safe. These measures cannot infringe upon or restrict the accused’s right to cross-examine. The Commission highlighted in its report that currently there are no witness protection statutes in India. Further, the report noted that witness protection must relate specifically to the facts of the case and should be based on the severity of the offence and the level of threat to the witness. Also noted in the report is the possibility of the witness being granted an alternative identity as part of their protection; each witness’s protection must be tailored to the unique circumstances surrounding the case. The 198th Report of the Law Commission was released in 2006 and was authored by Justice M. Jagannadha Rao. The report addresses only witness protection specifically, and there is no subject anywhere else in the entire report. Following the Apex Court’s decision in ‘*Sakshi v. Union of India*’, the Commission felt the immediacy of the need for improved witness protection laws as well as a proper witness protection program. The Commission submitted this report to the Government of India.

The identity of witnesses was recommended to be safeguarded in cases involving severe offences where their lives may be in danger by the first part of the report. The second part of the report focused on the Witness Protection Programme. While a draft bill was not proposed, several important recommendations were made, including the possibility of providing witnesses with new identities or relocating them until the trial concludes. The budgetary burden of the witness protection programme including relocation expenses would be shared by both the Central and State Governments. The Commission categorized witnesses into three groups *namely*, victim/witnesses known to the accused, victim/witnesses not known to the accused and witnesses whose identity is not known to the accused. The second and third groups need identity protection. It is noteworthy fact that many of its recommendations of the report were echoed in the ‘*Witness Protection Scheme, 2018*’ sanctioned by the Supreme Court.

2. Witness Protection Scheme, 2018

The Ministry of Home Affairs came up with the ‘*Witness Protection Scheme, 2018*’, which was upheld by the Supreme Court in ‘*Mahender Chawla v. Union of India*’⁸, a public interest litigation (PIL) filed under Article 32 of the Constitution concerning witness protection in rape cases. The Court called the Scheme “beneficial and benevolent” and affirmed its validity under Article 141 of the Constitution, declaring it as law until appropriate legislation is enacted.

The *scheme* marks India’s first national commitment to comprehensively protect witnesses which will ominously reinforce the country’s criminal justice system and boost the national security.

Laws related to Witness Protection in India

1. Bharatiya Nagarik Suraksha Sanhita, 2023

The BNSS, 2023 focuses on implementing effective measures to strengthen witness protection within the Indian Criminal Justice System. The BNSS contains multiple provisions that address both the protection of witnesses as well as ensure the integrity of the judicial process. One of the key legislative changes to provide better witness protection is Section 398 of the BNSS. It requires all the state Governments to establish and announce a Witness Protection Scheme for witnesses who have provided testimony against a criminal defendant. Furthermore, Section 308 states that evidence should be recorded in front of an accused person, but also allows for special types of testimony for witnesses who are at-risk or vulnerable (i.e., the evidence recorded without the victim being in the direct view of the accused).

Section 366 guarantees open hearings and public access to proceedings, thus ensuring transparency. Yet, in the interest of justice, the presiding judge has the authority to eliminate members of the public or certain groups from attending trial proceedings. In addition, Section 72 of the Bharatiya Nyaya Sanhita, 2023 prohibits any publication regarding the details of sexual offence related trials, especially for rape trials, without permission from the Court in order to preserve the secrecy of the victim. Section 335 provides for witness protection by permitting witnesses' evidence to be recorded without the accused being present if the accused cannot be found or is evading arrest. If the witness becomes unavailable for any reason such as demise or cannot testify for any reason, the recorded testimony would be admissible. Finally, under Section 191, witness and complaint provide a safeguard against harassment from law enforcement agencies (police) as they cannot be subjected to unnecessary restraints and can only be required to accompany the police to court in order to execute their bonds.

Section 319 gives judges some flexibility in allowing for testimony by others where their attendance would unduly delay proceedings or impose great expense (and in the case of some very important persons such as the President and Vice President who would generally have to testify before a commission) and for the Courts to allocate responsibility for payment of reasonable expenses incurred by a defendant as a result of testifying before the jury at the time of trial if a commission places the defendant in a position to be testified against by the prosecution. Finally, Section 350 provides that the Government must provide financial assistance to complainants and witnesses for expenses related to appearing in court and participating in the trial process based on rules established by the State Government.

2. Bharatiya Nyaya Sanhita, 2023

Section 232 establishes a criminal offence for trying to force someone to give false evidence during a case. If someone intimidates another, threatening to harm them or their reputation, property, or that of someone close to them, in order to get them to provide false testimony, they will be guilty. If found guilty, the individual faces up to seven years imprisonment, and a fine, or both. The main point of Section 232 is the act of intimidation; the individual may not have actually provided the false evidence. In cases where the intimidation causes the wrongful conviction of an innocent individual, such as an individual facing death or more than seven years in prison, the intimidator receives the same penalty as the wrongfully convicted individual; thus, there is parity between the effects of false evidence and the responsibility for the creation of that false evidence. The purpose of including Section 232, under Chapter XIV - Evidence and Offences Against the Administration of Justice, is to provide protection to witnesses and to ensure the integrity of the justice system; as well, the intention of Section 232 is to discourage any form of manipulation of evidence, and build public trust in the judicial system.

3. Bharatiya Sakshya Adhinyam, 2023

In accordance with Section 137 (a) of the BSA "A witness is obliged to answer any relevant question posed at a hearing (civil or criminal), including any questions which may cause him/her self-incrimination, or a

fine or forfeiture for answering”. Section 137 (b) says that A witness’ answers cannot be used against the witness in the course of the witness’ arrest/prosecution for any crimes, as long as the witness does not give false testimony. Section 137 (c) provides that the discretion of the Court regarding the credibility of a witness lies with the Court. If the credibility of the witness is not at issue, the Court will have discretion over what questions may be asked. The court will also notify the witness of their right to remain silent. According to section 137(d), the Court will consider the severity of the imputed question on the witness’ credibility. The Court will also have to weigh the level of relevance or insignificance of the imputed question against the witness’ credibility. The Court must also consider the risk of an adverse inference (for instance, lack of truthfulness) due to refusal to answer the imputed question. Section 153 provides an additional protection for the witness who is being questioned unreasonably and unlawful. The Court has the authority to report to the High Court or appropriate body the conduct of the lawyer for not having proper grounds to question the witness.

Finally, Section 154 empowers the Court to prohibit any question considered indecent or scandalous, even if it may be relevant to the case, unless it directly addresses the facts in issue or is crucial to determining the existence of those facts.

Witness Protection Laws Embedded in Specific Legislations

1. The Unlawful Activities (Prevention) Act, 1967

Section 44 of ‘the Unlawful Activities (Prevention) Act, 1967 (UAPA)’⁹ endowments Special Courts the authority to conduct *in-camera proceedings* and protect a witness’s identity and address if the court determines that the witness is at risk.

2. The Protection of Children from Sexual Offences (POCSO) Act, 2012

‘*The Protection of Children from Sexual Offences (POCSO) Act, 2012*’¹⁰ ensures strict confidentiality to protect child victims and witnesses. Section 23 prohibits the disclosure of any identifying information such as a child’s name, address, photograph, or family details in media reports, with violations subject to imprisonment and fines.

Keeping in view the objective to protect the child’s dignity, Special Courts are required to conduct trials in-camera, limiting attendance to only essential individuals and preventing the child from testifying multiple times (Sections 37 and 33(5)).

3. Whistle Blowers Protection Act, 2014

‘*The Whistle Blowers Protection Act of 2014*’ offers legal shield to individuals from retaliatory actions, who expose corruption or abuse of power by public officials. According to Section 5(1), the identity of the whistleblower must remain confidential, and can only be disclosed by the relevant authority usually the Central or State Vigilance Commission when absolutely necessary, with justifiable reasons documented.

4. The Witness Protection Bill, 2023

‘*The Witness Protection Bill 2023 (Bill No. XLIX of 2023)*’, was introduced in the Rajya Sabha on February 2, 2024. The objective of the bill is to establish a legal framework to provide witness protection from harassment, threats and intimidation. The bill establishes a three-tiered structure which consists of: the Witness Protection Authority, the Witness Protection Cell and the Witness Protection Fund. The bill defines three categories of threat to witnesses. In addition to identity concealment, witnesses may receive relocation or temporary accommodation and security; Financial support will be available for three months at first with possible extension depending upon circumstances.

5. Uttar Pradesh Witness Protection Scheme, 2024

Under this arrangement, every district will establish a committee of three members to look at ways to protect witnesses. Each local committee would consist of the District Judge, District Magistrate, and Joint

Prosecutor's Office. This proposal also includes the creation of a digital portal/application so that witnesses can submit requests for witness protection through an online platform.

6. The Delhi Witness Protection Scheme, 2025

'The Delhi Witness Protection Scheme, 2025', implemented on February 28, 2025, under Section 398 of the Bharatiya Nagarik Suraksha Sanhita, aims to protect vulnerable witnesses. Protection measures can involve physical security, relocation, logistical support, and financial assistance from the State Witness Protection Fund. The process requires an application to be submitted along with a threat assessment for review, and then it may be issued with the option of applying for interim protections until the final order is made. There is a review mechanism available to contest any protection orders issued. The State Witness Protection Fund is supported by funding from the Government, court-assessed fees, and donations. The intent of the fund is to increase the likelihood that witnesses will cooperate with the legal system, reduce the chances of witness intimidation, and increase the credibility of the judicial process in Delhi.

7. The Goa Witness Protection Scheme, 2025

It categorizes threats into three levels (A, B, C) and offers protection measures like escorts, identity concealment, and relocation. The application process includes immediate protection, with final orders issued within five days. Funding comes from the state budget, donations, and CSR. The scheme is monitored through regular reviews and ensures strict confidentiality to maintain witness safety and uphold justice.

Challenges

- 1. Fiscal Limitations:** An inadequate allocation of funds is a major hindrance in implementation of witness protection purpose.¹¹ Availability of infrastructure, relocation, identification, sustenance and security amenities depend upon the fund arrangement by the State Governments.¹² States are avoiding such expenses due to their financial deficit and non-obligatory legislative mandate.
- 2. Absence of Explicit Legal Outline:** It is evident that the Witness Protection Scheme of 2018 and BNSS Section 398 have been introduced, A consistent, inclusive and comprehensive legal outline are lacking which make exposure of uncertainty and discrepancies about witness protection in India. These uncertainty are mostly responsible for ad-hoc measure adopted by the court and enforcement agencies.
- 3. Execution and Synchronization of various stakeholders:** One of the major obstacles to effective witness protection is the poor coordination between state and central agencies.¹³ Lack of Standard protocol and communication mechanism among states leads to foremost encounter in any efforts to promote witness protection scheme across India.
- 4. Absence of Professional and specialised personnel:** Effective Implementation is possible if the stakeholders perform their task in professional and specialised way. The procedural compliance, application of security measures be contingent upon adequate training and skills of the personnel entrusted with these responsibilities. Adequate court infrastructure and provision of in camera proceeding are the basic necessity.
- 5. Distrust of Law Enforcement Machinery:** The common man faith and fear of adverse consequences play a role of blockade and witness reluctance to come forward for testimony. Corruption and dishonesty of law enforcement machinery eat away the trust and confidence of witness.
- 6. Family and Community Pressures:** Many times, accused may be known or relative to the witness and in that circumstances family and social pressure contribute significantly in the witness reluctance. Individual, family and social dynamics also triggered and amplified unwarranted burden on the witnesses.
- 7. Delay and Low Conviction Rates:** Inordinate delay in trial and absence of evidence lead to acquittal in many cases. The acquittal and discharge in criminal matters caused negative impression in the mind of witness. They became insecure about the verdict and accomplishment of justice which deter them to stand for rule of law.

8. Hostile Witness Phenomenon: Jessica Lal Murder Case (1999)¹⁴ Best Bakery Case (2002 Gujarat Riots)¹⁵ and several other cases cited for infamous cause that the witnesses became hostile. In *Mahender Chawla v. Union of India*¹⁶, the Supreme Court highlighted that a main reason witnesses turn hostile is the lack of adequate protection from the State. Witnesses are often intimidated by threats to their lives and the safety of their families, as well as the risk of violence, which leads them to withdraw from telling the truth

However, in *Khujji @ Surendra Tiwari v. State of Madhya Pradesh*¹⁷, the supreme court observed that it is not necessary to discard evidence merely because the witnesses turned hostile. The evidence is subject to rigorous scrutiny before acted upon.

CONCLUSION AND SUGGESTIONS

The development of witness protection laws in India has appeared significantly and seemed to be satisfactory. Yet it remains incomplete and unaccomplished task unless we achieved the goal of strengthening the country's criminal justice system. The introduction of the Witness Protection Scheme in 2018, along with the implementation of new criminal laws in 2023, marked a significant modification and advancement on these aspects. Section 398 of the Bharatiya Nagarik Suraksha Sanhita, 2023, transformed witness protection from a voluntary scheme to a statutory obligation. These developments epitomize imperative indicators that have raised the concern of witness safety to the forefront of the areas of legal reform. These initiatives, strengthened by Supreme Court rulings and recommendations from the Law Commission, emphasize the critical role of witnesses as the "eyes and ears of justice" and the urgent need to protect them from threats, intimidation, and violence.

However, despite these advancements, India faces significant challenges in implementing effective witness protection. Financial limitations, insufficient infrastructure, and poor coordination between agencies have hindered the full implementation of these schemes. The lack of a comprehensive, national law and inconsistent application across states have led to varying standards of protection. The lack of safety measures puts witnesses particularly in high-profile or sensitive cases at high risk. Furthermore, family pressure, individual fears, social stigma, limited awareness, and a general mistrust of law enforcement discourage witnesses from coming forward. The lack of testimony of witnesses resulted into low conviction rates and the cause of hostility among witnesses.

High-profile cases like the Jessica Lal murder, Best Bakery and the Vyapam scam have not only highlighted the severe consequences of failing to protect witnesses, but also in turn undermines public trust in the justice system. While states such as Maharashtra and Delhi have made notable progress, others still fall behind, underscoring the need for a uniform, well-funded, and technologically advanced witness protection framework.

Addressing these systemic issues is essential for strengthening the rule of law, restoring public faith in the judiciary, and ensuring that witnesses can testify freely and without fear, ultimately safeguarding justice for all. Moreover, following steps need to be taken to address the menace present in criminal justice system:

- i. Policy and Institutional Reforms:** A vigorous witness protection regime, involving a cohesive, dedicated, uniform and comprehensive mechanism based on integrated approach, can only lead to viable solution. The existing piecemeal approach needs to be replaced with legislation which advanced institutional and policy reforms.
- ii. Functioning and Procedural Perfections:** The shortcomings and challenges of the existing regime are multifold which expect the complete overhauling in the functioning and procedure. The standard protocol, mitigation of risk factors, assessment of criminality and profile of accused and threats to victim and witnesses must be the focal point of reforms which should be free from unnecessary dodges and technicalities.

- iii. **Provision for Adequate Finance:** A justifiable funding model is vital for the operative functioning of witness protection programs across Indian. The current funding structure, based on state-level witness protection funds, is inadequate and lacks reliable resource allocation.
- iv. **Adequate Training and Engagement of Specialists:** Nature of crime and criminality are changing at very fast pace. Traditional process of investigation and trial would not yield desired result.
All the stakeholder including judges, police personnel, prosecution officers must be acquainted with the recent changes occurred not only in laws but also in technology. They must also be sensitized to the unique needs of witnesses and their protection requirements. For the said purposed capacity building programmes, workshops, seminars, sensitisation and refresher courses in diverse areas should be made compulsory which should also linked to promotional avenues.
- v. **Expansion of Infrastructure:** The establishment of secure court facilities is essential for witness safety. These facilities should include separate entrances, waiting areas, and designated testimony spaces. Video-conferencing capabilities should be installed in all district courts to allow remote testimony when necessary.
- vi. **Evaluation and Appraisal of Witness Protection:** The adequacy of security, threat levels, and witness satisfaction should be assessed by regular quarterly reviews at all levels. A systemic approach of evaluation and assessment can lay down foundation for success of witness protection and which ultimately paved the way for advancement of justice.

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