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# WITNESS PROTECTION: A COMPARATIVE STUDY ACROSS THE DIFFERENT LEGAL SYSTEMS

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## ABSTRACT

Witness protection is integral to any fair and efficient criminal justice administration system. It is crucial to the reliability of testimony, as well as the credibility of judicial outcomes and public confidence in the rule of law, that assurance of safety be given in order for people to come forth and testify. This paper attempts a comparative review of the frameworks of protection provided to witnesses in five jurisdictions-India, the United States, the United Kingdom, France, and Russia-examining their statutory foundations, procedural safeguards, and practical challenges. It explores how each of these systems meets two competing imperatives: one of protecting the witness from intimidation or physical harm and the other of preserving the accused's right to a fair trial.

In India, the evolution from judicial guidelines to the Witness Protection Scheme, 2018 marks a significant stride toward institutionalizing safety mechanisms. The United States' WITSEC remains the most comprehensive model in the world, with relocation, identity change, and long-term support. The protective measures of the United Kingdom under the Youth Justice and Criminal Evidence Act 1999 and the Serious Organised Crime and Police Act 2005 focus on anonymity and special measures for vulnerable witnesses. The French legal framework codifies it under Articles 706-57 to 706-63 of the Code de procédure pénale, with an emphasis on concealment of identity, controlled anonymity, and judicial oversight. Russia's state protection and social support are integrated into Federal Law No. 119-FZ (2004) through multiple enforcement agencies.

Despite such progress, the same old problems keep cropping up-limited funding, technological vulnerabilities, lack of coordination between agencies, and ethical dilemmas regarding the proper balance between transparency and security. The study concludes that an effective witness protection framework must integrate legal precision, administrative efficiency, and humane support systems, ensuring that witnesses can testify fearlessly while upholding the fundamental fairness of criminal proceedings.

**Keywords:** Witness Protection, Criminal Justice, Anonymity, Comparative Law, Fair Trial

## INTRODUCTION

*“Witnesses, are the eyes and ears of justice.”*

- Jeremy Bentham

Greatness of a nation depends upon how it treats its weakest and most vulnerable citizen and how it commits itself to justice. In a criminal trial, a witness is considered the eyes and ears of justice-a fact long echoed by Jeremy Bentham<sup>1</sup> In the adversarial system of criminal justice followed in India and other common-law countries, the onus of the burden of proof lies with the prosecution, which has to prove that the accused is guilty beyond a reasonable doubt. In such a framework, the testimony of the witness assumes great importance in uncovering the truth and ensuring fair adjudication.

Witnesses, however, are more and more unwilling to depose freely owing to threats, coercion, or the fear of retribution.<sup>2</sup> This trend has a dampening effect not only on individual cases but also on the confidence of the public in the criminal justice system. Realizing the challenges, many countries have introduced witness protection programmes aimed at protecting witnesses from intimidation and enabling them to testify without fear. Efforts within India resulted in the adoption of the Witness Protection Scheme 2018, which was approved in *Mahender Chawla v. Union of India* (2019).<sup>3</sup> A similar comparison of the mechanism followed by the developed and transitional legal systems would help in assessing their workability and adaptability to Indian conditions.

## WITNESS – THE MORAL SPINE OF CRIMINAL JUSTICE

Witnesses form the moral and procedural backbone of criminal adjudication. They convert allegations into admissible evidence and give credence to the entire process of justice delivery. The Supreme Court of India has reiterated that “the quality of justice dispensed in a criminal trial depends upon the quality of evidence adduced, and the testimony of a truthful witness forms the nucleus of that evidence.”<sup>4</sup>

<sup>1</sup> Jeremy Bentham, *Rationale of Judicial Evidence* (1827) Vol I, p. 18.

<sup>2</sup> National Human Rights Commission, *Report on Protection of Witnesses of Crime* (2017).

<sup>3</sup> *Mahender Chawla v. Union of India* (2019) 14 SCC 615.

<sup>4</sup> *State of Gujarat v. Anirudh Singh* (1997) 6 SCC 514.

The important function they fulfill by providing their testimony before a competent court, upon which judges decipher facts objectively, is an act of a sacred civic duty. They have thus been seen to embody in themselves the dual roles of pillars of truth and the voice of conscience within the judicial framework. And it is these very witnesses who are vulnerable to hostility, harassment, or even physical danger for divulging incriminating facts against mighty accused persons. Without institutional protection, this truth-seeking function of the court runs the risk of being compromised. The Law Commission of India has iterated time and again that “without fearless witnesses, the criminal justice system would collapse under its own weight.”<sup>5</sup> The protection of witnesses, therefore, is not an administrative necessity but a constitutional imperative drawn from Article 21 of the Constitution, which guarantees the right to life and personal liberty.

## DEFINITION OF WITNESS

The term witness has not been defined uniformly under various jurisdictions. According to Section 124 of the Bharatiya Sakshya Adhiniyam, 2023 “all persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions or from giving rational answers”<sup>6</sup>. Consequently, any person who has knowledge of the facts of a case can be presented as a witness.

The Witness Protection Scheme 2018 provides a broader definition, 2 (k) describing a witness as any person who possesses information or documents about any offence, and whose statement has been recorded or is likely to be recorded in relation to any criminal proceeding.<sup>7</sup>

Internationally, 2(c) of the UN Model Law/UNDP Model Witness Protection Bill, 2000 defines a witness as a person who has made a statement or agreed to give evidence regarding the commission or possible commission of a serious offence<sup>8</sup>. Also, this definition extends the protection to people needing protection due to their association with the case or for other reasons relative to justice delivery and not just mere factual testimony in a Court but anyone at risk because of that involvement.

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<sup>5</sup> Law Commission of India, Report No. 198: Witness Identity Protection and Witness Protection Programmes (2006).

<sup>6</sup> The Bharatiya Sakshya Adhiniyam, 2023 (Act no.47 of 2023), s.124.

<sup>7</sup> Ministry of Home Affairs, Witness Protection Scheme 2018, para 2(k).

<sup>8</sup> The UNDP Model Witness Protection Bill, 2000, s.2(c).

## **TYPES OF WITNESS**

### **Competent Witness – Section 124 of the Bharatiya Sakshya Adhiniyam, 2023**

A competent witness is any person who can understand questions and give rational answers. This includes adults, children, and even the mentally impaired, unless proven otherwise. The competency test focuses on the ability to comprehend and respond, not age or prior record.

### **Dumb Witness – Section 125 of the Bharatiya Sakshya Adhiniyam, 2023**

A dumb witness is one who though unable to speak, can communicate by writing, signs, or otherwise.<sup>9</sup> The evidence of such a witness is recorded in the court as oral, since it would provide equal opportunities for examination and cross-examination.

### **Hostile Witness – Section 157 of the Bharatiya Sakshya Adhiniyam, 2023**

A person initially called to support a party's case but later gives evidence adverse to the calling party.<sup>10</sup> The law allows the party calling such witness to cross-examine him as if he were an opposing witness.

### **Child Witness – Section 124 of the Bharatiya Sakshya Adhiniyam, 2023**

A child can testify if capable of understanding questions and providing rational answers, and their credibility is judged on the basis of intelligence and ability, not on any fixed age limit.

### **Expert Witness – Sections 39 of the Bharatiya Sakshya Adhiniyam, 2023**

An expert witness is any person who possesses special skill, experience, or knowledge relevant to the matter involved<sup>11</sup>, for example, doctors, forensic scientists or handwriting experts. The purpose of an expert witness is to assist the court on technical matters.

### **Accomplice Witness – Section 138 of the Bharatiya Sakshya Adhiniyam, 2023**

An accomplice is a person who participates in the commission of the offence and gives

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<sup>9</sup> The Bharatiya Sakshya Adhiniyam, 2023 (Act no.47 of 2023), s.125.

<sup>10</sup> The Bharatiya Sakshya Adhiniyam, 2023 (Act no.47 of 2023), s.157.

<sup>11</sup> The Bharatiya Sakshya Adhiniyam, 2023 (Act no.47 of 2023), s.39.

evidence against other accused persons.<sup>12</sup> His evidence is admissible, but the court looks for corroboration because there exists the possibility of bias or unreliability.

### **Character Witness Sections 50 of the Bharatiya Sakshya Adhiniyam, 2023**

Character evidence is admissible in civil cases only to assess the quantum of damages, reflecting how a person's reputation and disposition influence the compensation they are entitled to receive.<sup>13</sup>

### **Chance Witness**

A witness who happened to be present at the scene by mere coincidence-a chance passerby-who had no motive or connection in the case whatsoever. The court examines such testimony for motive and credibility.

### **Interested Witness**

A witness with an interest or kinship, such as a family member or friend, that could influence their testimony: the courts take potential bias into consideration when evaluating credibility.

### **Prosecution and Defence Witnesses**

Prosecution witnesses help in establishing the case for the State, while defence witnesses present evidence or rebuttal supporting the case of the accused. Both categories are not statutory but are recognized in practice.

### **Official Witness**

Usually government officials, such as police, testify in court about investigations or official duties performed regarding the case. Their reliability depends on adherence to legal procedures.

## **CHALLENGES FACED BY THE WITNESS AND THEIR CONSEQUENCES**

Although it is from witnesses that criminal adjudication draws its vitality, they are indeed the most neglected aspect of the system. In India and many other countries, once they agree to

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<sup>12</sup> The Bharatiya Sakshya Adhiniyam, 2023 (Act no.47 of 2023), s.138.

<sup>13</sup> The Bharatiya Sakshya Adhiniyam, 2023 (Act no.47 of 2023), s.50.

testify, they often face extreme psychological, social, and physical pressure.<sup>14</sup> Such vulnerabilities have a direct impact on the credibility and effectiveness of criminal trials and result in miscarriages of justice.

- **Threats and Intimidation**

One of the severest challenges faced by witnesses is that of threat or intimidation from the accused or their associates. In high-profile or organized crime cases, the witnesses are more often directly or indirectly warned to retract or deny statements or refuse to appear before the court.<sup>15</sup> For example, the Best Bakery case and the Jessica Lal murder case brought to light the extent of witness hostility, especially due to intimidation without adequate protection on the part of the state.<sup>16</sup> These incidents highlighted the systemic gaps where the threat of reprisal surpasses the moral commitment to testifying truthfully.

- **Hostility and Retraction**

The problem of hostile witnesses is still persistent in Indian trials. The NCRB and the findings of the Law Commission have indicated that a large percentage of acquittals happen simply because witnesses became hostile.<sup>17</sup> In Zahira Habibullah Sheikh v. State of Gujarat (2004) the Supreme Court held that “hostile witness is the one who departs from the statement made during investigation and destroys the very foundation of the case.”<sup>18</sup> Lack of protection amounts to loss of public faith in the judicial institutions.

- **Delay and Harassment in Court Procedures**

Witnesses often have to undergo prolonged trials, adjournments, and a lack of basic facilities in court premises. “Witnesses are the worst sufferers in the administration of criminal justice,” stated the Law Commission’s 154<sup>th</sup> Report of 1996. The witnesses suffer undue harassment during cross-examination and also face loss of wages or employment opportunities, apart from

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<sup>14</sup> Law Commission of India, Report No. 198: Witness Identity Protection and Witness Protection Programmes (2006).

<sup>15</sup> Zahira Habibullah Sheikh v. State of Gujarat (2004) 4 SCC 158.

<sup>16</sup> Best Bakery Case, Zahira Sheikh v. State of Gujarat (2004) 4 SCC 158; State v. Sidhartha Vashisht @ Manu Sharma (2010) 6 SCC 1.

<sup>17</sup> National Crime Records Bureau, Crime in India Report (2018).

<sup>18</sup> Zahira Habibullah Sheikh v. State of Gujarat (2004) 4 SCC 158.

repeated summons<sup>19</sup>. This definitely diminishes voluntary participation and, accordingly, weakens success on the prosecutorial side.

### • Social Ostracization & Identity Exposure

In sensitive cases related to sexual violence, terrorism, or organized crime, revelation of the identity of the witness might result in both social stigma and even physical harm.<sup>20</sup> Despite directions by the judiciary for an in-camera trial and anonymity in *State of Punjab v. Gurmit Singh* (1996), the absence of an institutional protection mechanism continued to expose the witnesses to public retaliation.<sup>21</sup>

## CONSEQUENCES

These challenges cumulatively lead to declining conviction rates, erosion of public confidence, and the emergence of extra-judicial alternatives. Justice becomes a casualty when witnesses are silenced or subverted. In a democracy governed by the rule of law, such collapse of faith in the system is a serious cause for concern. Protection of witnesses thus is not only a question of personal safety but an essential constitutional duty to realize the right to a fair trial under Articles 14 and 21 of the Indian Constitution.<sup>22</sup> Failure to protect witnesses undermines the very edifice of justice. It leads to acquittal of guilty persons, demoralization of the enforcement agencies, and loss of public confidence in judicial institutions.<sup>23</sup> As the Supreme Court observed in *Zahira Habibullah Sheikh v. State of Gujarat*, the “witness must be able to depose without fear if the rule of law has to survive.” The consequences are therefore not individual but systemic: at the heart of the rule of law and constitutional morality.

## NEED FOR A WITNESS PROTECTION SCHEME

The need for a formal witness protection programme comes from the constitutional guarantee of right to life and fair trial under Articles 21 and 14. Fair trial is not a right of the accused alone but extends equally to the safety and dignity of witnesses. The Supreme Court has

<sup>19</sup> Law Commission of India, Report No. 154: The Code of Criminal Procedure, 1973 (1996).

<sup>20</sup> United Nations Office on Drugs and Crime (UNODC), Good Practices for the Protection of Witnesses in Criminal Proceedings Involving Organized Crime (2008).

<sup>21</sup> *State of Punjab v. Gurmit Singh* (1996) 2 SCC 384.

<sup>22</sup> The Constitution of India 1950, Arts. 14 and 21.

<sup>23</sup> *Mahender Chawla v. Union of India* (2019) 14 SCC 615.

recognised that “witness protection is necessary to maintain the majesty of law”<sup>24</sup> and it constitutes an essential aspect of a fair justice system.

This was necessitated by various reports of the Law Commission, judicial pronouncements, and directions by the NHRC. Other countries like the USA initiated federal witness protection programmes as far back as 1970, while India had to wait until the formulation of the Witness Protection Scheme, 2018.

The key justifications for a national framework include:

Ensuring the safety and anonymity of witnesses in sensitive cases;

Preventing re-traumatization of victims due to repeated exposure;

Encouraging truthful testimony without fear or inducement;

Enhancing the effectiveness of prosecution for organized crime and corruption.

## **LAW COMMISSION REPORTS ON WITNESS PROTECTION**

It has been possible to chart the evolution of witness protection discourse in India through a set of Law Commission reports that progressively recognized the need for institutional safeguards.

### **14<sup>th</sup> Law Commission Report (1958)**

Among the earliest reports to highlight the plight of witnesses was the 14<sup>th</sup> Report on Reform of Judicial Administration.<sup>25</sup> The report noted that most often, witnesses were subjected to “utter neglect.” It recommended measures such as allowances, resting facilities, and reduction in procedural delays for them. It did not propose any formal protection mechanism but declared that the comfort and dignity of a witness attending court needed to be ensured.

### **154<sup>th</sup> Law Commission Report (1996)**

The 154<sup>th</sup> Report on the Code of Criminal Procedure, 1973 had a more rights-based

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<sup>24</sup> Ibid

<sup>25</sup> Law Commission of India, Report No. 14: Reform of Judicial Administration (1958).

perspective.<sup>26</sup> This report recommended bringing in statutory provisions to protect the right of witnesses against intimidation, specifically in cases relating to organized crime and terrorism. The Commission proposed videoconferencing, in-camera trials, and identity concealment if warranted. It also recommended establishing witness protection cells under the district judiciary's monitoring.

### **172<sup>nd</sup> Law Commission Report (2000)**

This report was entitled Review of Rape Laws and acknowledged that women witness in cases of sexual offence are particularly vulnerable.<sup>27</sup> It emphasized confidentiality, conducting in-camera proceedings, and special arrangements for victims and witnesses to testify without fear or embarrassment.

### **178<sup>th</sup> Law Commission Report (2001)**

The Commission, in its 178<sup>th</sup> Report on the Law Relating to Arrest reiterated that witnesses generally face intimidation at the hands of police or accused persons.<sup>28</sup> It emphasized that unless adequate protection is given, no witness would be forthcoming and there would be no investigation and prosecution of crime. The report also recommended provisions for identity protection during sensitive investigations.

### **198<sup>th</sup> Law Commission Report (2006)**

The most comprehensive document directly relevant is the 198<sup>th</sup> Report titled Witness Identity Protection and Witness Protection Programmes.<sup>29</sup> It examined international practices including those in the USA, Canada, and Australia and proposed a National Witness Protection Programme.

The Commission recommended:

Legal recognition of witness protection;

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<sup>26</sup> Law Commission of India, Report No. 154 (1996) ch. 13.

<sup>27</sup> Law Commission of India, Report No. 172: Review of Rape Laws (2000).

<sup>28</sup> Law Commission of India, Witness Identity Protection and Witness Protection Programmes, Report No. 198 (2006)<https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2022/08/2022081031.pdf>.

<sup>29</sup> Law Commission of India, Report No. 198 (2006) <https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2022/08/2022081031.pdf>. Last visited 26 November 2025.

A multi-tier threat analysis mechanism;

An autonomous body to enforce the protection orders;

Confidentiality clauses and penalties for disclosure. The report became the blueprint for the Witness Protection Scheme, 2018, thereafter approved by the Supreme Court in *Mahendra Chawla v. Union of India*.

## **WITNESS PROTECTION BILL, 2015**

Before the formal adoption of the Witness Protection Scheme in 2018, an early legislative attempt was made by India through the Witness Protection Bill, 2015. This Bill had been initiated to establish a statutory framework regarding the protection of witnesses whose lives or properties were in jeopardy on account of involvement in criminal trials.

### **Objectives of the Bill**

The 2015 Bill had the following key objectives:

1. Establishment of a full-fledged witness protection programme in India.
2. Protect witnesses, family members, and close associates against intimidation or harm.
3. Encourage confidence among witnesses to give truthful testimony in judicial proceedings.
4. Prescribe procedural mechanisms for identity change, relocation, and financial aid during the protection period.

The Bill found that the absence of such a system was a violation of the right to life of the witness under Article 21 and impeded the administration of criminal justice. It would bring domestic law in line with international best practices under the United Nations Convention against Transnational Organized Crime (UNTOC, 2000).

### **Salient Features**

**Definition of Witness:** The Bill adopted an expansive definition, including any person with

information related to a criminal case who may be in danger due to their cooperation with the police or other law enforcement agencies.

**Witness Protection Authority (WPA):** Suggested setting up a central authority at the state level, with a proper implementation mechanism and funding.

Protection measures included relocation, issuance of new identities, and housing assistance for high-risk witnesses.

**Confidentiality:** Strict provisions prohibited disclosure of protected identity except under judicial authorization.

**Financial Assistance:** The Bill envisaged a Witness Protection Fund to support the costs of relocation, surveillance, and logistical aid.

While progressive in its outlook, the Bill did not get enacted because of administrative difficulties and lack of political consensus, yet it conceptually provided a behavior set for the Witness Protection Scheme, 2018, which was taken up later judicially.

### **MAHENDER CHAWLA AND OTHERS V. UNION OF INDIA – A LANDMARK IN MEDICAL JURISPRUDENCE**

The Supreme Court case of Mahender Chawla & Ors. V. Union of India & Ors. was a turning point in the witness protection jurisprudence of India. This public interest litigation, presented to the Supreme Court, revealed the absolute necessity for institutional measures to protect witnesses whose testimony was crucial for awarding the right of the trial in homicide cases.

The case had a number of petitioners, each highlighting the weak position of the witnesses in the Indian situation. Among these petitioners Mahender Chawla was the one who took the lead and he was a witness himself who escaped an attempted murder in relation to a high-profile criminal case. Other petitioners involved were the father of a killed witness and a journalist who had been getting threats to his life for doing news reports on the case. The rape trials of the self-styled godman Asaram Bapu and his son Narayan Sai from which the case came, where several witnesses had been either killed or attacked, created a picture of intimidation and the state machinery failing to protect the witnesses.

One of the arguments made by the petitioners was that this systemic failure not only violated their fundamental right to life and personal liberty as guaranteed under Article 21 of the Constitution, but also exonerated witnesses from the ability to testify without fear of retaliation. They based their argument on several Law Commission of India Reports, especially the 14<sup>th</sup> (1958), 154<sup>th</sup> (1996), 172<sup>nd</sup> (2000), 178<sup>th</sup> (2001), and 198<sup>th</sup> (2006) Reports, which, over several decades, had the same conclusion of recommending the legislation of a comprehensive witness protection law.

The Supreme Court, with Justice A.K. Sikri and Justice S. Abdul Nazeer as its spokesmen, stated that witness protection is an essential element of the right to a fair trial. The Court strongly declared that witnesses are “the eyes and ears of justice” and unless they have a sense of security, “the truth will be buried and justice will be the victim.” The Court recognized that witnesses often become hostile due to either coercion, inducement, or threat, which leads to the occurrence of unjust verdicts.

In the absence of a legal framework, the Court made use of its powers granted by Articles 141 and 142 of the Constitution and directed the enforcement of the Witness Protection Scheme, 2018, which was made by the Ministry of Home Affairs in consultation with the National Legal Services Authority (NALSA) and different State Governments. The Scheme brought about major procedural changes, such as the formation of District and State Witness Protection Cells, making Threat Analysis Reports, and categorizing witnesses into A, B, and C according to the level of risk.

The Court, by declaring the Witness Protection Scheme, 2018, as “law of the land” until formal legislation is passed, ensured its instant nationwide application. The decision emphasized that the right to a safe testimony and to participate in criminal proceedings without intimidation is an inseparable part of the right to life and fair trial guaranteed under Article 21. The ruling also moved India’s domestic law closer to the provisions of Article 24 of the United Nations Convention against Transnational Organized Crime (UNTOC), which obliges the member states to have effective witness protection measures, thereby raising India’s compliance with the provisions of the treaty.

The ruling In Mahender Chawla, therefore, serves as a landmark judgment in the Indian Constitution, providing a solution to the issue of non-implementation of the recommendations made by the government. Through this act, the Supreme Court once again proved its adherence

to the principle that no justice is possible without the courage of witnesses.

## WITNESS PROTECTION SCHEME, 2018<sup>30</sup>

The Witness Protection Scheme, 2018 is India's first pan-national framework to protect witnesses, as per the Mahender Chawla ruling.<sup>31</sup> It lays down a comprehensive structure for the protective measures, their categorization, funding, and implementation.

### Objectives and Scope

The Scheme primarily aims at the enabling of witnesses to speak openly and honestly with no fear of being punished. The Scheme is not limited to trials only; it covers all criminal proceedings even at the investigation stage throughout the country. Its main aim is to make the criminal justice system more reliable by cause less witness hostility and by maintaining fair trial standards.

### Key Features

**Witness Protection Authority:** The body, set up under the District Legal Services Authority (DLSA), is responsible for overseeing the implementation of the scheme at the district level.

**Witness Protection Fund:** The fund is established at both the state and district levels to meet expenses relating to the Witness Protection Fund relocation and security of witnesses as well as others connected with protection.

**Threat Analysis Report (TAR):** The report is to be drawn up by the Superintendent of Police within five working days of the application so as to assess the level of threat.

**Categorization of Witnesses:** This involves classifying witnesses into three categories-A, B and C in accordance with the level of threat.

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<sup>30</sup> Ministry of Home Affairs, Witness Protection Scheme, 2018 (Government of India, July 2018) (scheme text and guidelines). [https://www.mha.gov.in/sites/default/files/2022-08/Documents\\_PolNGuide\\_finalWPS\\_08072019%5B1%5D.pdf](https://www.mha.gov.in/sites/default/files/2022-08/Documents_PolNGuide_finalWPS_08072019%5B1%5D.pdf). Last visited 26 November 2025.

<sup>31</sup> Supreme Court of India, Mahender Chawla & Ors. V. Union of India & Ors., (2019) 14 SCC 615 (judgment approving Witness Protection Scheme 2018). (Full judgment PDF). [https://api.sci.gov.in/supremecourt/2016/34388/34388\\_2016\\_3\\_1501\\_10737\\_Judgement\\_05-Dec-2018.pdf](https://api.sci.gov.in/supremecourt/2016/34388/34388_2016_3_1501_10737_Judgement_05-Dec-2018.pdf). Last visited 26 November 2025.

**Confidentiality:** The strictest confidentiality is maintained in regard to all information connected with protection proceedings.

**Duration:** Protection measures are valid for the entire duration of the trial and may be extended thereafter if needed.

**Legal Sanction:** Breach of protection orders is treated as contempt of court.

### **Witnesses Classification**

The new Concept sets a three-level classification system according to the threat level:

**Category A:** Threat to life of the witness or that of his/her family during or after the trial.

**Category B:** Threats to the safety, reputation, or property of the witness or his/her family.

**Category C:** Moderate harassment or intimidation that is still capable of discouraging testimony.

This classification scheme enables the issuance of different forms of protection according to the particular requirement of every witness.

### **Types of Protective orders**

These include, among others, a wide range of protective actions that may be adopted either individually or cumulatively depending upon the circumstances of the case. These include, but are not limited to, the following:

1. Separation of Witness and Accused:

The authority may ensure that the witness and the accused are not placed together during investigation or trial proceedings, thereby preventing any direct confrontation or intimidation. (Witness Protection Scheme, 2018, Clause 7(a))

2. Confidentiality in Communications:

The telephone company shall be ordered to provide an unlisted or new telephone number to the witness so that traceability or harassment, even through digital means, can be avoided (ibid, Clause 7(b)).

**3. Physical Security and Surveillance:**

Body protection, periodic police patrols and installation of CCTV cameras, fencing and reinforced security doors in the residence of the witness can be arranged to ensure personal safety (ibid, Clause 7(c)).

**4. Change of Identity:**

This may include the changing of identity of the witness with new identification documents in extreme situations to keep them undercover. Original identity is kept secret, also known as cover, and records are accessible only to the designated authorities concerned ibid, Clause 7(d)).

**5. Relocation:**

The authority can also order a change in residence or relocation to a safe house to eliminate proximity to the accused or potential threats (ibid, Clause 7€).

**6. Security while attending the court:**

A government vehicle may be provided for safe transportation to and from the court, ensuring the witness's safety during the trial dates (ibid, Clause 7(f)).

**7. Statement Recording Safeguards:**

During the taking of statements, an independent observer or officer may have to be present for the sake of transparency and prevention of coercion (ibid, Clause 7(g)).

**8. In-Camera Proceedings:**

The courts can also hold in-camera trials or closed-door hearings to avoid public exposure of the witness and sensitive evidence (The Bharatiya Nagarik Suraksha Sanhita ,2023, Section 366).

**9. Special Courtroom Infrastructure:**

Witnesses may testify from specially designed courtrooms equipped with one-way mirrors, separate access passages for the accused and witness, and voice or face distortion technology to conceal their identity during testimony. (Witness Protection Scheme 2018, Clause 7(i))

#### 10. Financial Assistance:

A witness under protection may be provided with financial assistance from the Witness Protection Fund for subsistence, relocation, or legal aid during the protection period (ibid, Clause 7(j)).

#### 11. Miscellaneous Measures:

The Competent Authority also has complete discretion to adopt additional protective measures upon the written request of the witness to allow flexibility, depending upon the evolving threat perception. (ibid, Clause 7(k)).

### **Procedure under the Scheme:**

The procedural machinery starts with an application for protection before the Competent Authority, i.e., the District Judge, submitted by a witness or investigating officer.

**Application Submission:** This can be done by the witness, police officer, or family.

**Threat Analysis Report:** Based on the source and seriousness of the threat, a detailed assessment is made and submitted by the Superintendent of Police.

**Decision:** The Competent Authority reviews the TAR and makes a decision within five working days and issues protection orders, where applicable.

**Implementation:** The protection measures are implemented by the District Police in coordination with the DLSA and Witness Protection Cell.

**Review:** Circumstances having changed, orders may be amended or recalled.

### **Threat Analysis Report<sup>32</sup>**

The TAR indeed forms the backbone of the entire Scheme. This report assesses the vulnerability of a witness and makes recommendations on necessary safeguards. It takes into

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<sup>32</sup> JUSTICE N. KOTISWAR SINGH, Protection of Witness and Victim Compensation, (Paper presented at the National Judicial Academy, 2020-21), available at [Https://nja.gov.in/Concluded\\_Programmes/2020-21/P-1230\\_PPTs/1.Protection%20of%20Witness%20and%20Victim%20Compensation.pdf](Https://nja.gov.in/Concluded_Programmes/2020-21/P-1230_PPTs/1.Protection%20of%20Witness%20and%20Victim%20Compensation.pdf) (Last visited: November 26, 2025).

account factors such as:

Nature of the offence, such as organised crime, terrorism, and sexual violence.

Past incidents of intimidation or harassment.

Influence and resources of the accused.

Social and geographical proximity of the witness to the accused.

The TAR must be submitted confidentially to the Competent Authority, which ensures that sensitive information is not disclosed to unauthorized persons. The use of the TAR institutionalizes objectivity in granting protection rather than being left at the discretion of the administration.

### **Witness Protection Cell**

The Scheme requires that a WPC be established at the district and state levels, with members representing senior police officials and members from the DLSA. Thus, protection orders are to be carried out by the Cell; it will maintain a database of protected witnesses and co-ordinate with the judiciary.

#### **Functions of the Witness Protection Cell<sup>33</sup>**

1. Provide immediate security and logistical assistance.
2. Enable relocation, change of identity, and secure communications.
3. Regular follow-up on the well-being of the witness.
4. Keep records of expenditure from the Witness Protection Fund.
5. Submit periodical reports to the Competent Authority. The Witness Protection Cell thus forms the operational arm of the Scheme for translation of judicial orders into action at the

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<sup>33</sup> Monica Chaudhary, “Witness Protection in India: Issues and the Road Ahead,” *Delhi Journal of Criminal Law* (article / PDF). <https://lc2.du.ac.in/DJCL4/7.%20Dr.%20Monica%20Chaudhary.pdf>. Last visited 26 November 2025.

ground level.

## LEGAL FRAMEWORK RELATING TO PROTECTION OF WITNESS

While there is no single comprehensive statute on witness protection in India, it evolves through a combination of constitutional safeguards, statutory provisions, judicial precedents, and executive schemes. The Indian legal system recognises that the ability of witnesses to testify freely and truthfully is an integral facet of the right to fair trial emanating from Article 21 of the Constitution. Thus, various provisions under the Constitution of India, Bharatiya Nyaya Sanhita, Bharatiya Nagarik Suraksha Sanhita, Bharatiya Sakshya Adhiniyam, and special laws collectively provide a framework to secure the safety, dignity, and cooperation of witnesses in the justice process.

### Constitutional Foundations

The Constitution of India, under Article 21, ensures the right to life and personal liberty, interpreted expansively to include the right to live with dignity<sup>34</sup> and security. Protection to witnesses, particularly those under threat, falls within the purview of this as an essential condition for ensuring justice. (India Const. art. 21) Further, Article 14 ensures equality before law, thereby mandating that all persons, including witnesses, receive protection from arbitrary threats or discrimination while cooperating with judicial proceedings<sup>35</sup>. In particular, Article 38 of the Directive Principles of State Policy imposes a duty upon the State to promote social order and justice, which further amplifies the imperative need for systemic mechanisms to secure witnesses against harm or undue influence.<sup>36</sup>

### The Bharatiya Nyaya Sanhita, 2023

Although the BNS does not explicitly create a witness protection programme, it contains various sections that criminalize acts of intimidation, coercion, and inducement against witnesses. These provisions indirectly form the first line of legal protection for safeguarding witnesses from unlawful pressure or retaliation.

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<sup>34</sup> The Constitution of India, 1950, art.21.

<sup>35</sup> The Constitution of India, 1950, art.14.

<sup>36</sup> The Constitution of India, 1950, art.38.

### **Section 232: Threatening or Inducing Any Person to Give False Evidence**

This section punishes any person for threatening or inducing any witness to give false evidence, with imprisonment up to seven years, and also provides for a fine. If innocent person is convicted for death or more than 7 years then, the person who threatens also punished with same extent.<sup>37</sup> It deals directly with attempts to subvert the course of justice by the manipulation of witnesses.

### **Section 351 – Criminal Intimidation**

This section attracts penalty for criminal intimidation, especially while threatening a witness with injury to prevent them from giving evidence or to dissolve the proceedings of a criminal case.<sup>38</sup>

### **Section 229 – Punishment for False Evidence**

This section punishes witnesses who deliberately fabricate or falsify evidence. Not protective in nature, it ensures accountability and the credibility of the witness system by deterring perjury.<sup>39</sup>

### **Section 72 – Disclosure of Identity in Sexual Offences**

This prohibits the publication or disclosure of the identity of victims of sexual offences, such as rape. It extends to maintain the privacy of witnesses and victims, especially in sensitive cases.<sup>40</sup>

Together, these provisions under the BNS ensure intimidation, inducement, or retaliation against a witness are all punishable crimes, thus making it safer for individuals to come forward and assist in criminal proceedings.

### **The Bharatiya Nagarik Suraksha Sanhita, 2023**

The BNSS thus provides procedural mechanisms to ensure the protection, anonymity, and

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<sup>37</sup> The Bharatiya Nyaya Sanhita,2023 (Act 45 of 2023), s.232.

<sup>38</sup> The Bharatiya Nyaya Sanhita,2023 (Act 45 of 2023), s.351

<sup>39</sup> The Bharatiya Nyaya Sanhita,2023 (Act 45 of 2023), s.229.

<sup>40</sup> The Bharatiya Nyaya Sanhita,2023 (Act 45 of 2023), s.72.

convenience of witnesses during investigation and trial. Some sections demonstrate legislative intent to minimize hardship and exposure of witnesses in vulnerable situations.

### **Section 179 – Attendance of Witnesses**

Under this provision, police officers cannot force women or male below 15 years of age and over 60 years of age, or a mentally or physically disabled person or a person with acute illness to attend interviews at police stations.<sup>41</sup> Rather, their statements are required to be recorded at their residence to protect them from harassment or unnecessary inconvenience

### **Section 308 – Evidence to be taken in presence of accused**

While the presence of the accused in the examination of witnesses is a general rule of trials, this section provides an exception for the court to permit video-conferencing or shield screens to protect witnesses' testimonies without confronting the accused directly.<sup>42</sup> The Supreme Court has interpreted it in a liberal way to strengthen witness protection (State of Maharashtra v. Dr. Praful B. Desai, (2003) 4 SCC 601).

### **Section 346 – Power to postpone or adjourn proceedings**

This section calls for the timely examination of witnesses and frowns on adjournments, while considering that lengthy proceedings may expose a witness to intimidation or fatigue that could weaken testimony. It states when witnesses are in attendance, no adjournment or postponement shall be granted, without examining them, except for special reasons to be recorded in writing. Where a witness is present in Court but a party or his advocate is not present or the party or his advocate though present in Court, is not ready to examine or cross-examine the witness, the Court may, if thinks fit, record the statement of the witness and pass such orders as it thinks fit dispensing with the examination-in-chief or cross-examination of the witness, as the case may be.<sup>43</sup>

### **Section 366 – Court to be open**

Perhaps the most important procedural safeguard, this section permits in-camera trials,

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<sup>41</sup> The Bharatiya Nagarik Suraksha Sanhita, 2023 (Act 46 of 2023), s.179.

<sup>42</sup> The Bharatiya Nagarik Suraksha Sanhita, 2023 (Act 46 of 2023), s.308.

<sup>43</sup> The Bharatiya Nagarik Suraksha Sanhita, 2023 (Act 46 of 2023), s.346.

particularly in cases involving sexual offences or in those that require witness anonymity.<sup>44</sup> Courts can prevent public access by allowing only those directly concerned to enter the courts, keeping the whole affair confidential and secure.

### **Section 341 – Power to Summon Material Witnesses**

This section empowers the court to recall or summon any witness at any stage if their testimony is crucial for justice.<sup>45</sup> This discretionary power ensures that intimidation or absence does not prevent the court from reaching critical evidence.

Put together, these provisions manifest the role played by the BNSS in guaranteeing procedural safety, anonymity, and accessibility for witnesses.

### **The Bharatiya Sakshya Adhiniyam, 2023**

Bharatiya Sakshya Adhiniyam, 2023, is the governing law regarding admissibility, relevancy, and competency of testimony. It indirectly protects witnesses by emphasizing fair procedures and truthful deposition.

### **Section 124 - Who May Testify**

Every person is competent to testify unless prevented by incapacity. In this regard, the section is inclusive in ensuring that no witness is disqualified on the basis of social or economic status. The principle is that the truth can come from any source, and such persons must be protected to testify freely.

### **Section 137 – Witness not excused from answering on ground that answer will criminate**

While witnesses shall answer all proper questions, the proviso to Section 137 gives them immunity against prosecution for those answers which lead to self-incrimination, except in the case of perjury. This is a legal assurance given so that testimony cannot be used in any manner whatsoever against the witness.

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<sup>44</sup> The Bharatiya Nagarik Suraksha Sanhita, 2023 (Act 46 of 2023), s.366.

<sup>45</sup> The Bharatiya Nagarik Suraksha Sanhita, 2023 (Act 46 of 2023), s.341.

## Sections 149 and 158 – Protection from Improper Cross-Examination

These provisions forbid character assassination and irrelevant questioning during cross-examination, especially of women or vulnerable witnesses. Courts are empowered to intervene when questioning becomes abusive or intimidatory (State of Punjab v. Gurmit Singh, (1996) 2 SCC 384).

## Section 168 – Judge's power to put questions or order production

The provision allows the presiding judge to question any witness to discover or obtain proper proof of relevant facts. This strengthens judicial control in ensuring that witnesses are not harassed, bullied, or coerced during proceedings.

Thus, the BSA assures substantive procedural fairness and elicits the truth while protecting the dignity or safety of witnesses.

## Special Laws Ensuring Witness Protection<sup>46</sup>

The special legislations in India dealing with terrorism, organised crime, corruption, and sexual offences explicitly include provisions for witness anonymity, relocation, and protection, recognising the enhanced risk faced by witnesses during such trials.

### The Prevention of Terrorism Act, 2002 (POTA)

Section 30 of POTA allowed witness identity protection, enabling courts to conceal names and addresses, and to conduct proceedings in-camera<sup>47</sup>. Though the Act was repealed, this provision inspired later frameworks like the Witness Protection Scheme, 2018.

### The Maharashtra Control of Organised Crime Act, 1999 (MCOCA)

Under Section 19 of the MCOCA, the identity of a witness to an organised crime is protected. Special Courts under this Act have the powers to keep the identity and addresses of witnesses confidential and to issue appropriate directions for their protection.<sup>48</sup>

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<sup>46</sup> IJCRT, Witness Protection Scheme In India: Issues And Challenges (research paper, 2023) (PDF). <https://ijcert.org/papers/IJCRT2306881.pdf>. Last visited 26 November 2025.

<sup>47</sup> The Prevention of Terrorism Act, 2002 (Act 15 of 2002), s.30.

<sup>48</sup> The Maharashtra Control of Organised Crime Act, 1999 (Mah 30 of 1999), s.19.

### **The Juvenile Justice (Care and Protection of Children) Act, 2015**

Sections 24 and 25 prohibit disclosure of the identity of a child in conflict with law or child victim/witness, ensuring that minors in the proceedings are protected from publicity or psychological harm.<sup>49</sup>

### **The Protection of Children from Sexual Offences Act, 2012 (POCSO)**

This Act provides one of the most advanced models of witness protection in India.

Section 23 prohibits media from disclosing identity of the child.

S. 33(7) requires that the child not be called repeatedly to testify.

Section 36 mandates that the deposition of the child be done in-camera, and if possible, in the presence of a supportive person.

These provisions ensure that the atmosphere remains child-friendly, yet without exposure or trauma.<sup>50</sup>

### **The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989**

Section 15A confers a right upon the victim or the witness to protection at investigation, trial, and post-trial stages and enables them to seek relocation and police protection.<sup>51</sup>

The combined effect of the existing provisions throughout the BNS, BNSS, BSA, and special statutes is to create a multi-layered but fragmented legal framework for witness protection in India. While these laws criminalize intimidation and allow procedural safeguards like in-camera trials and anonymity, the lack of a comprehensive codified statute results in many enforcement and funding gaps. The Witness Protection Scheme, 2018, as approved by the Supreme Court, fills some of these shortfalls, but a dedicated Witness Protection Act remains necessary to ensure uniformity, accountability, and effective enforcement in protecting

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<sup>49</sup> The Juvenile Justice (Care and Protection of Children) Act, 2015 (Act 2 of 2016), ss. 24, 25.

<sup>50</sup> The Protection of Children from Sexual Offences Act, 2012 (Act 32 of 2012), ss.23, 33(7), 36.

<sup>51</sup> The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (Act 33 of 1989), s.15A.

witnesses—the “eyes and ears of justice”

## COMPARATIVE ANALYSIS WITH OTHER COUNTRIES

### **United States of America:**

The United States Marshals Service provides for the security, health, and safety of government witnesses and their immediate dependents whose lives are in danger because of their cooperation with the U.S. government concerning organized crime, terrorism, drug trafficking, and other major crimes through the Federal Witness Security Program, also known as WITSEC.

The Attorney General must publish guidelines that specify which cases are eligible for this authority, and the government is immune from civil liability for decisions to provide or withhold protection.

Protection measures include relocation, 24-hour security in high-threat environments, new identities, keeping the location confidential and assistance with housing, subsistence, employment, transportation and psychological adjustment. Only the Attorney General can disclose a protected identity when said disclosure is for a law enforcement or public interest purpose. Before the facility admission, candidates are required to sign a Memorandum of Understanding regarding truthful testimony, refraining from criminal activity, supervision requirements, all known legal obligations, full cooperation with federal authorities

Eligibility typically involves that the witness's testimony be essential to the prosecution of RICO offenses (18 U.S.C. §1961), federal drug trafficking (21 U.S.C.), other serious felonies where retaliation is a threat, similar state offenses, or civil/administrative proceedings where testimony can be substantially endangering. The Witness Security Reform Act of 1984 enhanced protections of participant rights, particularly those related to privacy and self-determination, and placed stricter supervision on individuals with criminal histories.

Since its establishment under the Organized Crime Control Act of 1970, which was then amended by the Comprehensive Crime Control Act of 1984<sup>52</sup>, WITSEC has protected,

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<sup>52</sup> Comprehensive Crime Control Act of 1984, Pub. L. No. 98-473, 98 Stat. 1976. Available at: <https://www.govinfo.gov/content/pkg/STATUTE-98/pdf/STATUTE-98-Pg1976.pdf> Last visited on 1 December 2025.

relocated, and given new identities to more than 19,250 witnesses and their family members since 1971. The program offers 24-hour protection in high-threat environments, including during pretrial conferences, trials, and court appearances.<sup>53</sup>

Participants in the program receive new identities, plus financial support, housing, medical care, and job training until they become self-sufficient. To get in, a candidate undergoes rigorous selection by the law enforcement agency that provides sponsorship, along with the U.S. Attorney, the U.S. Marshals Service, and the Office of Enforcement operation (OEO).

Under Title V of the Organized Crime Control Act (18 U.S.C. §3521) the Attorney General is authorized to relocate witnesses and provide them and their families with new identities, financial assistance, housing, and medical care.<sup>54</sup> Protection is afforded family members where their safety is in jeopardy due to the witness's cooperation.

Importantly, no witness under active protection who has followed the program's protocols has ever been harmed or killed. The program is highly regarded as one of the most important tools in the U.S. government's fight against organized crime and terrorism, with WITSEC personnel viewed as globally recognized leaders in the fields of witness protection and security management.

Although very successful, WITSEC has also been criticized for extreme secrecy and a lack of judicial involvement. Some witnesses who were relocated and placed in new identities continued their criminal activities. It remains the international model for the overall protection of witnesses.

## **United Kingdom**

The United Kingdom has a comprehensive, multi-tier system of protecting vulnerable, intimidated, and high-risk witnesses through statutory special measures, anonymity provisions, reporting restrictions, and a formal witness protection scheme.

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<sup>53</sup> United States Marshals Service, "Witness Security Program (WITSEC)," U.S. Department of Justice, 2024. Available at: <https://www.usmarshals.gov/witsec/> Last visited on 1 December 2025.

<sup>54</sup> Organized Crime Control Act of 1970, Pub. L. No. 91-452, Title V, 84 Stat. 922 (codified at 18 U.S.C. §3521) Available at: <https://uscode.house.gov/view.xhtml?path=/prelim@title18/part2/chapter224> Last visited on 1 December 2025.

Previously there were no systematic rules for collecting evidence in the United Kingdom, and witness testimony was usually required in prosecutions. The UK updated its witness-related legislation with the Serious Organised Crime and Police Act (2005) and formally adopted an adversarial procedure. Chapter IV of SOCPA provided statutory measures for protecting persons who agreed to testify, and increasing concerns within the 2010–2015 coalition government resulted in the establishment of the first UK-wide witness protection scheme, the UK Protected Persons Service (UKPPS)<sup>55</sup>. Individuals who come forward for protection—often accomplices or members of serious criminal organisations—are considered by the Head of the UKPPS with advice from the Attorney General. Protection is provided based on the level of threat and normally entails the movement of the individual to a safe area. Regional Protected Persons Units work in confidence to maintain secrecy and assist protected persons in rebuilding their lives. The UKPPS manages personal information in a secure manner and requires total cooperation on the part of protected persons for long-term safety.

In practice, witness protection is organized through the UK Protected Persons Service (UKPPS), a national system managed by the National Crime Agency (NCA), although the everyday protection is carried out by regional police forces. By 2014, UKPPS was protecting close to 3,000 people, which included not just witnesses but also other persons who faced serious and organised crime threats, terrorism, gang retaliation, or honour-based violence.<sup>56</sup>

Part II, Chapter I of the Youth Justice and Criminal Evidence Act 1999 provides special measures for those witnesses whose evidence is likely to be diminished by fear or distress<sup>57</sup>. For the purpose of eligibility under Section 17(1), it will be based upon a likely reduction in the quality of the evidence that will result, but under Sections 17(4)–5, automatic eligibility is bestowed upon complainants of sexual offences and modern slavery offences, including violent crimes listed in Schedule 1A. These measures include screens, live-link testimony, evidence in private, and other arrangements to minimize intimidation.

Anonymity and confidentiality of witnesses are enhanced by reporting restrictions. There is automatic anonymity for those below 18 years in the youth court under Section 49 of the Children and Young Persons Act 1933<sup>58</sup>, and Sections 45 and 45A YJCEA 1999 provide

<sup>55</sup> Serious Organised Crime and Police Act 2005 (SOCPA), c. 15, Part 2, Chapter 4.

<sup>56</sup> Crown Prosecution Service (CPS), “Witness Anonymity and Special Measures,” Legal Guidance (2023), available at <https://www.cps.gov.uk>. Last visited on 1 December 2025.

<sup>57</sup> Youth Justice and Criminal Evidence Act 1999 (YJCEA), c. 23, ss. 17–46.

<sup>58</sup> Children and Young Persons Act 1933, c. 12, s. 49.

discretionary and lifetime restrictions on identifying those in youth courts. Similar protection may be extended to adults under Section 46 YJCEA 1999. Victims of rape and serious sexual offences have automatic anonymity under the Sexual Offences (Amendment) Act 1992<sup>59</sup>, while victims of FGM have similar protection under Schedule 1 of the Female Genital Mutilation Act 2003.

Formal witness protection and relocation—including new identities—are governed by Chapter 4, Part 2 of the Serious Organised Crime and Police Act 2005 (SOCPA 2005). Protection is afforded to those under considerable threat and can last a lifetime, so long as new identities remain secret. As the United Nations Office on Drugs and Crime identifies, the system's objective is to protect those individuals whose testimony will lead to breaking up organized criminal enterprises. Witnesses also receive institutional support through the Citizens Advice Witness Service, which provides free, independent help to prosecution and defence witnesses in all criminal courts across England and Wales. Where necessary to prevent frustration to justice, the courts can also further protect witnesses by restricting public access to trials. With guidance from the Crown prosecution service, courts are enabled to grant witness anonymity orders under Section 86 of the Coroners and Justice Act 2009, which allows for the use of pseudonyms, screening, or modification of voice, and restrictions on questions that would lead to the identification of the witness<sup>60</sup>. In putting together legislation, national protection services, anonymity tools, and court-based safeguards, there has evolved one of the most structured and balanced witness protection regimes.

## FRANCE

In France, the Code de procédure pénale (Code of Criminal procedure) of France provides, under Title XXI – Protection des témoins (Protection of witnesses), a systematic procedure to protect those witnesses whose lives could be in jeopardy.<sup>61</sup> Article 706-57 enables every witness who is not suspected of the offence to replace his home address with that of a police station or gendarmerie; such information is maintained in a secret register. Article 706-58 goes further and makes provisions for témoignage anonyme (anonymous testimony) in cases where the punishment is for more than three years' imprisonment, if the disclosure of identity creates

<sup>59</sup> Sexual Offences (Amendment) Act 1992, c. 34.

<sup>60</sup> Coroners and Justice Act 2009, c. 25, s. 86.

<sup>61</sup> Code de procédure pénale, Title XXI, Articles 706-57 to 706-63. Available at:

<https://www.legifrance.gouv.fr/codes/id/LEGITEXT000006071154/> Last visited on 1 December 2025.

a real danger. The Juge des libertés et de la détention (Judge of Liberties and Detention) authorizes the concealment of the identity, which is maintained in a confidential file.

Article 706-59 criminalizes any unlawful disclosure of the protected witness's identity or address and prescribes penalties of up to five years' imprisonment and €75,000 fine to ensure strict confidentiality. Yet, at the same time, anonymity does not compromise the rights of the defence. According to Article 706-60, anonymity cannot be retained when knowing the witness's identity is essential for a fair defence. Until ten days have passed, the accused may challenge the anonymity, after which the Président de la chambre de l'instruction (Président de la chambre de l'instruction) decides without the possibility of appeal. If necessary, the hearing may be annulled or the witness may waive anonymity.

The Code further guarantees procedural fairness and the reliability of such procedures. Article 706-61 offers the possibility for the defendant to confront the protected witness through remote means, whereby the witness's voice could be distorted to prevent identification. Article 706-62 explicitly prohibits conviction based exclusively on anonymous or voice-altered testimony, where corroboration would be demanded. Article 706-63 provides that a décret du Conseil d'État (Decree by the Council of State) shall lay down the detailed rules for applying the protection measures according to this section, with a view to guaranteeing their uniform application in the proceedings.

The effectiveness of the protection of witness depends on coordination between judiciary and police, which sometimes faces bureaucratic hurdles.

## **RUSSIA**

Federal Law of the Russian Federation No. 119-FZ, which came into effect on 20 August 2004, is titled "On State Protection of Victims, Witnesses and Other Participants in Criminal Proceedings." It institutes a comprehensive legal framework to provide protection to individuals in danger because of their participation in criminal justice processes.

This Federal Law institutes the complete system of state protection of victims, witnesses, and other participants in criminal proceedings. It provides security measures for the protection of life, health, and property, as well as social support measures for those who are in danger due

to their involvement in a criminal case.<sup>62</sup>

Victims, witnesses, private prosecutors, suspects, accused persons, defendants, their lawyers, experts, specialists, translators, psychologists, civil claimants/defendants, and their legal representatives are all protected by the law. Protection may also be given before the initiation of formal proceedings in the cases of applicants, informants, and eyewitnesses who assist in preventing or solving a crime. Also, close relatives of the abovementioned persons and persons connected with them can be protected if threats against them have the purpose of influencing the primary witness.

Decisions on granting protection may come from courts, investigators, inquiry officers, or investigating authorities. The structure of the system entails three levels of bodies: the body authorizing protection, the body that carries out protection by means of security measures, and the body that offers social support. A person receiving protection is defined as a “protected person,” and protection may continue beyond conviction, acquittal, or release from liability.

Depending on the nature of the threat and the stage of the proceedings, the implementation of the programme is carried out by the Ministry of Internal Affairs, the Federal Security Service, the Federal Penitentiary Service, and the Investigative Committee. The agencies conduct risk assessments, elaborate on protection plans, and monitor compliance. Any threat to or harm, or interference with a protected witness under the Russian Criminal Code, is strictly punished. Overall, the model of Russia can be viewed as one of the most structured in Eastern Europe, with a strong element of secrecy, relocation, and long-term protection.

## CASE LAWS

### **Mahender Chawla v. Union of India (2018)<sup>63</sup>**

In this case several petitioners, including Mahender Chawla (a witness who survived an assassination attempt), approached the Supreme Court highlighting the threats faced by witnesses in high-profile cases such as the Asaram Bapu trial. The Supreme Court validated the Witness Protection Scheme, 2018, and ruled that it is enforceable under Article 141 & 142.

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<sup>62</sup> Federal Law No. 119-FZ of 20 August 2004 “On State Protection of Victims, Witnesses, and Other Participants in Criminal Proceedings.” Available at: <https://cis-legislation.com/document.fwx?rgn=6754#> Last visited on 1 December 2025.

<sup>63</sup> (2019) 14 SCC 615.

The Court held that the protection of witnesses is one of the components of Article 21 and directed all states to implement the graded protection.

### **Zahira Habibullah Sheikh v. State of Gujarat<sup>64</sup> (Best Bakery Case) (2004)**

In this case several witnesses turned hostile in the Best Bakery massacre case because of intimidation and threats after the 2002 Gujarat riots. The Supreme Court ordered a retrial outside Gujarat, criticized state machinery, and held that fair trial is impossible without secure witnesses. The Court emphasised that the State must ensure safety, dignity and confidence of witnesses.

### **Neelam Katara v. Union of India<sup>65</sup> (2003–2013)**

In this case Vikas Yadav and associates threatened witnesses in the Nitish Katara murder case. The Delhi High Court laid down guidelines on witness identity protection, escort, relocation, and controlled court access, serving as a precursor to the 2018 Scheme.

### **Sakshi v. Union of India (2004)<sup>66</sup>**

In this case there was concern about the vulnerability of child and sexual-assault victims during cross-examination. The Supreme Court mandated in-camera trials, use of screens, separate waiting rooms, and banning direct confrontation, recognising indirect protection as part of witness safety.

### **United States v. Gigante (2nd Cir. 1999)<sup>67</sup>**

The government's witness against mob boss Vincent Gigante was fearful of Mafia retaliation. The Court allowed two-way closed-circuit televised testimony, holding that the protection of a witness from trauma can justify remote testimony without violating the Confrontation Clause.

### **Maryland v. Craig<sup>68</sup> (1990)**

Because of trauma and fear, a child victim was unable to testify in person. The US Supreme

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<sup>64</sup> (2006) 3 SCC 374.

<sup>65</sup> 103 (2003) DLT 555.

<sup>66</sup> (2004) 5 SCC 518.

<sup>67</sup> 166 F.3d 75 (2d Cir. 1999).

<sup>68</sup> 497 U.S. 836 (1990).

Court allowed video testimony where confrontation would endanger a witness on the basis that the public interest in protection outweighs traditional confrontation under controlled circumstances.

### **Roviaro v. United States<sup>69</sup> (1957)**

The defendant sought disclosure of an undercover informant's identity. The Court held that "confidentiality is necessary for safety, and disclosure of an informant's identity is required only when essential to a fair trial." This has since then become an important tenet for witness anonymity and protection of informers.

### **R v. Davis<sup>70</sup> (2008)**

The conviction was based on anonymous witnesses in a murder trial. House of Lords held that anonymity was an infringement of the right to a fair trial. Parliament subsequently adopted the Criminal Evidence (Witness Anonymity) Act, 2008, which laid the basis for witness-protection law in the UK.

### **R v. Mayers<sup>71</sup> (2008)**

Several witnesses testified as anonymous, fearing gang retaliation. The Court held that anonymity orders require strict safeguards, namely necessity, proportionality, and fairness to the defence.

### **The Smirnov Case (2014)**

A witness, having reported corruption in local law enforcement, received threats. The court applied witness protection and ruled that state protection starts when a threat is reasonably established.

### **The “Marseille Organised Crime Case” (2013)**

Witnesses feared violent retaliation from drug cartels. Tribunal authorized testimony by remote

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<sup>69</sup> 353 U.S. 53 (1957).

<sup>70</sup> [2008] UKHL 36.

<sup>71</sup> [2008] EWCA Crim 1418.

audio-visual means with voice modulation, using Article 706-61.

## **CHALLENGES IN WITNESS PROTECTION**

### **Threats and Intimidation**

Witnesses often receive direct threats from accused persons or organized criminal groups, which instill fear and a reluctance to testify. Risks of retaliation in cases involving terrorism, trafficking, and organized crime are extremely high.

### **Lack of a Uniform Legislative Framework**

In most jurisdictions, witness protection provisions are dispersed within different procedural codes, rather than being integrated into one comprehensive statute. This leads to a lack of coherence and uniformity in implementation and judicial interpretation.

### **Resource Constraints and Operational Limitations**

Effective witness protection requires safe houses, relocation, new identities, psychological support, and round-the-clock security-all activities that require huge financial and human resources beyond the reach of most states.

### **Tension Between Anonymity and Fair Trial Rights**

The anonymity granted to certain witnesses may sometimes operate in conflict with the constitutional guarantee to an accused right to cross-examination, hence leading to challenges as to due process and natural justice.

### **Institutional Coordination Issues**

Protection efforts require coordination by police, prosecution, courts, and intelligence agencies. Poor communication or bureaucratic delays only heighten the vulnerability of witnesses. 6. Risk of leakage of information Internal corruption, political interference, and a lack of confidentiality protocols are all possible causes of disclosure regarding witness identity or location.

### **Lack of Training and Professional Competence**

Most of the officers working for witness protection have not been specifically trained in areas

of risk assessment, covert relocation, cyber-security, and psychological management of the vulnerable witness.

### **Vulnerabilities of the Digital Era**

Complete anonymity of relocated witnesses, as well as their protection, cannot be achieved due to the rise in social media, public databases, and digital surveillance.

### **Long-term Sustainability Issues**

Some witnesses need permanent relocation and identity change. Maintaining such protection over a long period of time is financially and logistically difficult.

## **SUGGESTIONS FOR IMPROVING WITNESS PROTECTION**

### **Omnibus Legislation**

Countries should have on the books a specific, uniform Witness Protection Act that details categories of protection, procedures for anonymity, responsibilities of agencies, and judicial safeguards.

### **Establishment of Specialized Witness Protection Authorities**

Effective implementation and monitoring could only be realized by a nationally set-up Witness Protection Authority with independent powers, trained personnel, and confidential systems.

### **Use of Technology for Safe Testimony**

Videoconferencing, encrypted communications, voice/image distortion, and remote depositions can greatly minimize the physical presence risk for witnesses.

### **Adequate and Dedicated Funding**

It is also important to ensure that there are separate budgetary allocations for relocation, housing, living allowances, medical care, and psychological services.

### **Enhancing Inter-Agency Coordination**

Clear protocols for cooperation between police, prosecution, intelligence units, and judicial

authorities need to be institutionalized in order to avoid protection gaps.

### **Improved Confidentiality and Data Protection**

Special storage and access conditions regarding witness information are needed, accompanied by strict sanctions in case of unauthorized disclosure.

### **Capacity Building and Specialized Training**

Regular training for police and judicial officers in the fields of witness risk analysis, cybersecurity, undercover operations, and trauma-informed approaches is required.

### **Strict Punishment for Witness Tampering**

Laws should provide strict punishments for intimidation, coercion, threats, or bribery of witnesses to prevent obstruction of justice.

### **Relocation Programs for Witnesses**

Long-term rehabilitation necessitates the provision of vocational training, employment support, educational assistance, and psychological counseling.

### **Community and Civil Society Involvement**

Awareness programs help change societal stigma associated with it and gradually develop public cooperation with witness protection work.

## **CONCLUSION**

Witness protection is an indispensable component of any effective criminal justice system. Without the safety, security, and dignity of witnesses being ensured, the proper dispensation of justice by courts is seriously impaired. While legislative reforms and protection programmes have been put in place by several countries, resource and coordination bottlenecks, issues regarding confidentiality, and long-term sustainability continue to persist. Strengthening the legal framework, use of modern technological tools, creation of independent protection authorities, and ensuring funding can go a long way in bolstering witness confidence. Ultimately, a strong, well-organized witness protection system acts to increase conviction rates and strengthens public confidence in the justice delivery system, upholding the rule of law.

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