Witness Protection in India: Has the Witness Protection Scheme, 2018 Achieved Its Objectives?

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ABSTRACT

The integrity of the criminal justice system in India relies heavily on oral evidence, yet witness intimidation frequently undermines fair trials, causing high rates of hostile witnesses. This paper provides a comprehensive analysis of the Witness Protection Scheme, 2018, approved by the Supreme Court of India in the landmark case of *Mahender Chawla v. Union of India*, evaluating its constitutional grounding under Article 21. While the scheme introduced vital mechanisms like risk stratification categories, the Witness Protection Fund, and specialized procedural safeguards, its ground execution faces severe administrative friction. These hurdles include narrow offence-type eligibility under Clause 2(i), technical barriers in identity concealment due to centralized biometric systems like Aadhaar, and a short-term temporal deficit in protection duration. The study evaluates this evolutionary trajectory from early Law Commission reports to the recent statutory codification under Section 398 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023. By comparing India's framework with global standards, such as the United States Federal Witness Security (WITSEC) program, this paper outlines critical structural reforms needed to establish an independent, non-partisan protection regime.

KEYWORDS

Witness Protection, Witness Intimidation, Hostile Witnesses, Witness Protection Scheme, 2018; Bharatiya Nagarik Suraksha Sanhita, 2023; WITSEC

INTRODUCTION

Witnesses are integral for a fair trial in a criminal justice system. The conviction rate in India relies heavily on oral evidence. For a long period, intimidation of and threat to witnesses was a serious issue, hampering a sound and just criminal trial due to the witnesses turning hostile. This prolonged fear resulted in weakened justice machinery and loss of public confidence in

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justice administration, highlighting the need for introducing witness protection measures. This need has been brought up by the courts on various occasions, and they have held witness protection as an integral part of fundamental rights under Article 21. Although there were features for in-camera trials and confidentiality in certain criminal procedures, there was an absence of an adequate mechanism to protect witnesses in India.[2] A massive turning point came in 2018, when the Supreme Court approved the 'Witness Protection Scheme, 2018', in the landmark judgment of *Mahender Chawla v. Union of India*.[3] The scheme focused on identifying measures for safeguarding witnesses and their family members from threat, intimidation, and inducement. The Supreme Court mandated the scheme as a 'law' under Article 141 and 142 of the Indian Constitution, until a formal legislation is drafted and enacted by Parliament and/or State Legislatures on the subject matter.[4]

CONSTITUTIONAL AND ANALYTICAL GROUNDING FOR THE SCHEME

The constitutional foundation for witness security in India is rooted in Article 21's right to life, which guarantees a balanced "fair trial" for the accused, the victim, and the witness.[5] This creates a constitutional conflict between the accused's right to open cross-examination and the witness's right to anonymity and safety, which the Supreme Court resolves through the principle of proportionality, prioritizing the witness's life in exceptional circumstances.

Article 21 and the Jurisprudential Scope of "Fair Trial"

The constitutional foundation for witness security is rooted in Article 21 of the Constitution of India, which guarantees the right to life and personal liberty. While early constitutional jurisprudence primarily viewed Article 21 as a safeguard for the accused, the Supreme Court of India has expanded this doctrine to encompass all participants in the administration of justice. A "fair trial" is no longer considered a one-sided right reserved exclusively for the defendant; it is a triangular concept balancing the interests of the accused, the victim, and the public interest represented by the witness.

The right to life inherently includes the right of a witness to testify in a court of law without the fear of physical elimination, violent retaliation, or social ostracization. When a witness is

[2] Gauri Chaudhary & Satyam Sharma, Witness protection scheme in India: Challenges and Reforms Under The New Criminal Laws, International Journal of Law Management & Humanities (2026).
[3] Mahender Chawla & Ors. v. Union of India & Ors., (2019) 14 SCC 615, ¶ 1.
[4] INDIA CONST. art. 141-142.
[5] INDIA CONST. art. 21.

intimidated into silence or forced to deliver compromised testimony, their personal liberty is directly violated, and the judicial process is corrupted. Therefore, the state's constitutional obligation to maintain public order and uphold the rule of law requires it to create a safe ecosystem for testimony. Protecting a witness is not an act of administrative leniency; it is a core component of the right to life under Article 21.[6]

Constitutional Conflict: The Right of the Accused vs. Witness Anonymity

The introduction of protective measures like identity concealment creates a complex constitutional conflict between two competing aspects of Article 21: the accused's right to an open, transparent defence versus the witness's right to physical safety and anonymity. In an adversarial criminal justice system, the right to a fair trial grants the accused the right to cross-examine prosecution witnesses. Effective cross-examination typically requires knowing the witness's identity, background, and motives to expose bias or falsehoods. Mandating complete identity concealment or using anonymous testimony can restrict the defence's ability to challenge the evidence, creating potential due process violations.

To resolve this constitutional tension, the judiciary relies on the principle of proportionality. In the landmark case *Kartar Singh v. State of Punjab (1994),* the Supreme Court evaluated provisions within anti-terror legislation that permitted witness anonymity.[7] The apex court upheld the validity of identity concealment in exceptional circumstances, ruling that the right to life of a witness takes precedence over the procedural rights of the accused when there is an imminent danger to survival.

However, the Court emphasized that this power must be balanced carefully. To preserve the core of a fair trial, the defence must still be allowed to cross-examine the witness on the substance of their testimony, even if identifying details like names and residential addresses are redacted or hidden behind a screen. Identity concealment must remain a targeted, case-specific exception rather than a routine procedural tool, ensuring that the search for truth does not trample the fundamental rights of either party.

[6] ibid.

[7] Kartar Singh v. State of Punjab, (1994) 3 SCC 569.

Key Features of the 2018 Scheme

The Witness Protection Scheme, 2018, is a paradigm shift in the Indian criminal justice system, moving from ad-hoc security measures to a codified rights-based protective framework.[8] The scheme, approved by the Supreme Court of India, is aimed at addressing a serious systemic vulnerability: the high rate of witnesses turning hostile due to extra-judicial intimidation. It aims to establish common legal, administrative and financial frameworks to ensure the integrity of testimony and the rule of law in all jurisdictions.

Risk Stratification Via Threat Categorisation

The Witness Protection Scheme, 2018 is fundamentally supported by a three-tier classification system, that is designed to measure protective responses to assessed levels of threat.[9] Within this framework, the highest level of risk is Category A, which includes cases where the threat is to the life of the witness or the witness' family members during the investigation or trial. Category B is for secondary risks. In this case, the focus is on threats to the safety, reputation or property of the witness. Category C is for moderate threat, drafted to counter systematic harassment or intimidation tactics. Such detailed characterisation ensures the equitable allocation of state resources, from basic surveillance to intensive as well as long-term protective interventions, based on the severity of the danger.

Institutional Framework and Witness Protection Fund

The scheme implements these protective categories by distributing authority through a particular institutional framework at the district level. In each district, a "Competent Authority" led by the District and Sessions Judge is established to evaluate risk and implement protective measures. This committee reviews the "Threat Analysis Reports" prepared by the district police head (e.g., Assistant Commissioner, Deputy Superintendent of Police) to ensure that security interventions are based on objective law enforcement data. This judicial-administrative device is supplemented by a separate "Witness Protection Fund" to be created in all States and Union Territories. The fund acts as the financial backbone of the Scheme and is used to meet the costs of security details, emergency operations, digital monitoring and the other expenses of the relocated persons.

[8] Ministry of Home Affairs, Witness Protection Scheme, 2018, endorsed by the Supreme Court of India.
[9] ibid.

Procedural Safeguards

The scheme introduced procedural safeguards to protect the physical safety as well as institutional privacy of the witnesses. The operational measures, under the scheme, range from immediate physical security, such as police escorts and home surveillance, to structural interventions, including identity concealment and complete relocation to new geographic areas. Even to protect witnesses from courtroom intimidation the Scheme provides for in-camera trials, remote video testimony, and the deployment of Specialised Vulnerable Witness Courtrooms. By reshaping the physical and digital procedure of the trial process, these interventions reduce the possibility of witnesses turning hostile, thereby protecting the integrity of the judicial process.

Foundational And Historical Context of the Scheme

The codification of witness protection in India evolved from Law Commission reports emphasizing safety and identity protection, heavily influenced by the 2003 Malimath Committee's call for state-guaranteed witness rights.[10] This progression was forced by high-profile failures in cases like Best Bakery and Jessica Lal, where systemic lack of protection resulted in hostile witnesses, compelling the establishment of a formal Witness Protection Scheme.[11] Further details on this legal evolution are available through official Law Commission of India reports.

THE EVOLUTIONARY TRAJECTORY OF LAW COMMISSION REPORTS

The codification of witness protection in India is the culmination of decades of progressive recommendations by the Law Commission of India, which systematically highlighted how the absence of safety measures compromised the integrity of trials. The 14th Report (1958) first acknowledged the basic administrative discomforts faced by witnesses, focusing primarily on travel allowances and waiting facilities at courtrooms.[12] The 154th Report (1996*)* shifted the narrative from physical comfort to existential safety, recommending distinct legislative

[10] MALIMATH COMMITTEE, REPORT OF THE COMMITTEE ON REFORMS OF CRIMINAL JUSTICE SYSTEM (2003).
[11] Zahira Habibullah Sheikh & Anr. v. State of Gujarat & Ors., (2004) 4 SCC 158; Sidharam v. State of N.C.T. of Delhi, (2010) 6 SCC 1.
[12] LAW COMMISSION OF INDIA, REPORT NO. 14: REFORM OF JUDICIAL ADMINISTRATION (1958).

protections to counter the rising threat of criminal retaliation.[13] At the same time, the 172nd Report (2000) built upon this foundation by advocating for specialized safeguards in trials involving sexual offences and terrorism, highlighting the acute vulnerability of specific witness demographics.[14] Finally, the 198th Report (2006) represents the most critical milestone, explicitly titled "Witness Identity Protection and Witness Protection Programme".[15] This report provided a comprehensive blueprint that directly influenced modern policy, arguing that protecting a witness's identity is often a prerequisite to securing their physical safety and calling for a formalized, structured statutory protection regime.

The Malimath Committee Guidelines

The Committee on Reforms of Criminal Justice System, chaired by Justice V.S. Malimath in 2003, brought a crucial rights-based focus to the discourse by linking witness cooperation directly to the survival of the rule of law.[16] The Committee argued that within the adversarial system, witnesses are treated poorly, forced to endure prolonged delays, hostile court environments, and severe physical threats without any statutory comfort. The Malimath Committee asserted that a witness performs a public duty toward the state and is therefore entitled to comprehensive legal rights. It strongly recommended the enactment of a dedicated law on witness protection, emphasizing that the state has an absolute constitutional obligation to shield individuals from external intimidation and ensure their dignity throughout the judicial process.

Hostile Witness Phenomena and Judicial Failures

The historical failure of the state to protect its sources of evidence led to a systemic crisis known as the "hostile witness phenomenon," where high-profile criminal trials collapsed due to witnesses abruptly retracting their statements. In *Zahira Habibullah Sheikh v. State of Gujarat (Best Bakery Case)*, the Supreme Court of India was forced to intervene directly after key witnesses turned hostile during the initial trial due to severe extra-judicial intimidation and political pressure.[17] The apex court famously noted that trials become a farce when witnesses

[13] LAW COMMISSION OF INDIA, REPORT NO. 154: THE CODE OF CRIMINAL PROCEDURE, 1973 (1996).
[14] LAW COMMISSION OF INDIA, REPORT NO. 172: REVIEW OF RAPE LAWS (2000).
[15] LAW COMMISSION OF INDIA, REPORT NO. 198: WITNESS IDENTITY PROTECTION AND WITNESS PROTECTION PROGRAMMES (2006).
[16] MALIMATH COMMITTEE, REPORT OF THE COMMITTEE ON REFORMS OF CRIMINAL JUSTICE SYSTEM (2003).
[17] Zahira Habibullah Sheikh & Anr. v. State of Gujarat & Ors., (2004) 4 SCC 158.

are coerced into silence, ultimately ordering a retrial outside the state to ensure a fair process. Similarly, in the *Jessica Lal Murder Case (Sidartha Vashisht v. State (NCT of Delhi)),* the widespread public outcry following the mass defection of prosecution witnesses exposed the deep vulnerabilities of an unshielded evidentiary system against wealthy and influential defendants. [18]

These high-profile judicial failures made it clear that state inaction directly enabled the subversion of justice, creating the urgent momentum that eventually forced the judiciary and legislature to establish the Witness Protection Scheme.

Granular Analysis of 2018 Scheme's Gap

The Witness Protection Scheme, 2018, contains a narrow eligibility criterion under Clause 2(i) that restricts protection to heinous crimes (capital offences), leaving witnesses of non-capital corporate fraud, cyber extortion, and local syndicate crimes completely exposed.[19] Additionally, executing identity concealment is blocked by India's interconnected digital infrastructure, where centralized biometric databases like Aadhaar prevent the creation of pseudonyms. Without a secure, ring-fenced registry to issue clean documents, any routine background check can expose a witness's past, making complete administrative anonymity an impossibility.

The Offence-Type Limitation Barrier

A major structural weakness of the Witness Protection Scheme, 2018, is its narrow scope of eligibility, which is restricted by the definitions in Clause 2(i).[20] The framework limits protection primarily to witnesses involved in heinous crimes, specifically those carrying the death penalty, life imprisonment, or severe sexual offences. This strict threshold ignores the reality of systemic crimes that may carry lesser formal sentences but pose an equal danger to witnesses.

Witnesses who expose local political corruption, corporate financial fraud, cyber extortion, or organized illegal mining syndicates face severe retaliation. However, because these offences do not meet the strict criteria of Clause 2(i), these individuals are frequently denied access to

[18] Sidharam v. State of N.C.T. of Delhi, (2010) 6 SCC 1.
[19] MINISTRY OF HOME AFFAIRS, WITNESS PROTECTION SCHEME, 2018, (2018).
[20] MINISTRY OF HOME AFFAIRS, WITNESS PROTECTION SCHEME, 2018, Cl. 2(i) (2018).

the scheme. This arbitrary barrier creates a significant security gap, leaving witnesses of dangerous, non-capital crimes completely exposed to extra-judicial coercion.

Technical And Regulatory Flaws in Identity Concealment

While the scheme lists identity concealment and the creation of a new persona as primary protective measures, executing these changes is difficult due to India's interconnected digital infrastructure. An identity change requires a comprehensive system to issue clean, untraceable public documents, including educational certificates, passport registries, Permanent Account Number (PAN) cards, and Aadhaar biometrics.

Without a dedicated legal framework to manage this process, creating a new identity risk causing major systemic issues like it is nearly impossible to issue a second valid identity card under a pseudonym without triggering system flags. Centralized biometric systems like Aadhaar are designed to prevent duplicate entries. Additionally, the lack of a secure process to link old records with a new persona means that any routine background check for employment, banking, or housing can easily expose the witness's past. Without strict data protection rules separating witness registries from standard administrative databases, corporate trackers, local officials, or motivated adversaries can easily uncover the witness's real identity.

Consequently, until the state builds a secure, ring-fenced identity system specifically for witness protection, the promise of true anonymity remains an administrative impossibility.

Ground Reality of the Scheme

The Witness Protection Scheme, 2018, transformed witness security into a formal right, yet its effectiveness is hampered by structural inefficiencies and systemic ambivalence. While the framework established a legal foundation, it faces issues with administrative delays, inconsistent funding, and infrastructure deficits. Furthermore, the mandatory three-month renewal period for protection orders is incompatible with long-running criminal trials, leaving witnesses in a state of chronic vulnerability. The scheme ultimately suffers from a significant gap between legislative intent and operational execution.

Systematic Ambivalence and Partial Success

The implementation of the Witness Protection Scheme, 2018, presents a landscape of systemic ambivalence. While the framework has fundamentally advanced the jurisprudence surrounding the rights of vulnerable witnesses, its practical efficacy is severely constrained. It succeeds in transitioning witness protection from an ad-hoc executive luxury to a formalized, institutional right. However, on-ground execution remains structurally weak. Administrative friction between the judiciary, state secretariats, and local law enforcement often translates into bureaucratic delays. This gap between legislative intent and operational reality undercuts the primary objective of the scheme of providing immediate, seamless reassurance to individuals micro-targeted by criminal syndicates or powerful litigants.

The Temporal Deficit: Short Term Protection Vs. Lifetime Trial Procedure

A critical structural flaw within the scheme is the restrictive duration of its protective orders. The framework limits the validity of ordered protective measures to a period of three months at a time, mandating periodic reassessments to extend coverage. This short-term temporal design is highly incompatible with the protracted lifespan of the Indian criminal justice system, where trials routinely span several years. By forcing witnesses to repeatedly undergo threat evaluations, the scheme introduces a state of chronic vulnerability. The sudden expiration of an assessment period can leave a witness completely exposed to retaliation before a renewal order is processed, transforming a protective shield into an unstable, temporary buffer.

Fiscal And Infrastructure Implementation Hurdles

The operationalization of the scheme is further crippled by uneven fiscal architecture and infrastructural deficits across various jurisdictions. Although the framework mandates the creation of a “Witness Protection Fund” within every State and Union Territory, actual budgetary allocations have been largely inadequate. Many states have failed to allocate sufficient, independent funding, leaving local authorities dependent on depleted general police budgets. This fiscal starvation directly hinders the execution of resource-intensive measures, such as long-term geographic relocation or identity changes. Consequently, a lack of specialized vulnerable witness courtrooms and digital surveillance infrastructure forces courts to rely on basic police escorts, reducing the scheme’s comprehensive protection to a nominal security detail.

Institutional Conflict and Threat to Evaluative Neutrality

The structural reliance on local law enforcement to execute the scheme creates a significant conflict regarding evaluative neutrality. Under the current framework, the Competent Authority relies heavily on “Threat Analysis Reports” drafted by senior police officials (such as the Assistant Commissioner of Police or Deputy Superintendent of Police). This dynamic introduces a vulnerable vector for external pressure, particularly in high-profile cases involving influential political actors or state machinery. Because the police hierarchy operates under executive control, the objectivity of a threat assessment can easily be compromised. If a law enforcement agency downplays a risk due to political pressure, the judicial committee is left with skewed data. This structural flaw threatens to deny critical protection to the very witnesses who need it most.

LEGISLATIVE DEVELOPMENTS

The Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, strengthens Indian witness protection by replacing judicial directives with a mandatory statutory obligation under Section 398, reducing administrative indifference.[21] To match international standards like the US Witness Security (WITSEC) program, India must transition from short-term measures to comprehensive, deep structural reforms such as permanent identity changes and independent relocation agencies.[22] You can explore the full analysis of the legislative developments and global comparisons by reading the provided text.

Codification And Statutory Grounding Via the BNSS, 2023

The transition from an executive-backed framework to a legislatively mandated regime represents a vital evolutionary step in Indian criminal jurisprudence. The formal adoption of Section 398 in the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, provides the necessary statutory grounding that the Witness Protection Scheme, 2018, previously lacked. Prior to this legislative update, the 2018 framework functioned primarily under judicial directives via Article 142 of the Constitution, leaving its enforcement vulnerable to administrative indifference and bureaucratic delays. By embedding witness protection directly into the core code of criminal procedure, the legislature has elevated witness security to a mandatory statutory obligation. This statutory integration reduces the ad-hoc nature of previous interventions, making it harder for state governments to ignore their duty to protect vital legal actors.

Comparative Insights and Global Standards: The WITSEC Paradigm

To fully realize the statutory intent of Section 398 of the BNSS, the Indian criminal justice system must adopt best practices from mature international frameworks, such as the United

[21] Bharatiya Nagarik Suraksha Sanhita, 2023, § 398, No. 46, Acts of Parliament, 2023 (India).
[22] Witness Security Reform Act of 1984, 18 U.S.C. §§ 3521-3528 (United States).

States Federal Witness Security (WITSEC) program.[23] The primary limitation of the Indian framework remains its reliance on short-term, superficial security measures like temporary police escorts and home surveillance. In contrast, global standards emphasize complete socio-legal transformation, featuring highly secure witness relocation protocols and permanent identity changes. Implementing such deep structural shifts requires setting up specialized, non-partisan federal agencies that operate independently of local police forces. By studying these international models, Indian policymakers can upgrade the current system from a basic, short-term police protection detail into a comprehensive program capable of neutralizing long-term threats from organized crime and powerful litigants.

CONCLUSION

The transition of witness protection in India from an ad-hoc executive luxury to a formalized statutory right represents a vital evolutionary step in criminal jurisprudence. Historically forced by high-profile judicial failures in cases like Best Bakery and Jessica Lal, the initial framework established under the Witness Protection Scheme, 2018, sought to guarantee a triangular fair trial balancing the accused, the victim, and the witness. However, a significant gap persists between legislative intent and operational reality. The current implementation suffers from a strict temporal deficit caused by mandatory three-month renewals, rendering protection unstable over the protracted lifespan of Indian trials. Furthermore, uneven fiscal architectures across jurisdictions and an over-reliance on local law enforcement for Threat Analysis Reports compromise evaluative neutrality and operational efficacy.

The inclusion of BNSS Section 398 addresses the previous lack of statutory backing by elevating witness security to a mandatory state obligation. Yet, as noted the legislative codification alone cannot overcome deep technological and systemic barriers. To fully realize a safe ecosystem for testimony, Indian policymakers must systematically resolve biometric duplicate constraints, implement secure registries, and establish non-partisan federal agencies inspired by mature international frameworks like the United States WITSEC program.

[23] *Id.*