



Witness Protection Program (WPP) and Its Legal Foundation in India

** Indresh**

Prof. Dr. Kameshwar Prasad^Ψ

Abstract

The 1985 UN General Assembly Declaration on Basic Principles of Justice for Crime and Power Victims States should minimise victim annoyance, preserve their privacy where appropriate, and secure their, their family's, and witnesses' protection from intimidation and reprisal. 2000 UN Convention Against Trans-National Organised Crimes and contains 3 Protocols: State parties must protect witnesses in criminal proceedings who testify about Convention offences like money laundering, corruption, trafficking in persons, and migrant smuggling from retaliation or intimidation, as well as their relatives and others close to them. Article 142(1) of the Indian Constitution allows the Supreme Court to issue any ruling required for "complete justice" in any case. As suggested by the Supreme Court and Law Commission recommendations, the Mahender Chawla case declared the Witness Protection Scheme, 2018, law for all states and union territories until Parliament passes a particular law. Threats and intimidation render these witnesses hostile and erode the court system's integrity. Even though Article 21 guarantees the right to testify, witnesses are often ignored or intimidated. A thorough witness protection scheme is stressed in law commission findings. The 2015 Witness Protection Bill and 2020 Victim and Witness Protection and Assistance Bill failed to improve legal protections. Mahender Chawla v. Union of India led to the 2018 Witness Protection Scheme by the Supreme Court. The study examines Indian hostile witness behaviour and its causes and effects. It then critically assesses the 2018 Scheme and stresses the necessity for strong witness protection laws.

Keywords: justice, inherent, India, Jurisdiction, system, Witness, Harassment.

* Research Scholar, Department of Law, Meerut College, Meerut.

^Ψ Prof., Department of Law, Meerut College, Meerut.

1. Introduction

The criminal justice system cannot overstate witnesses' importance. Legal principles underpin and ethically guide the system. Witness testimony is crucial to victim justice. Courtroom testimony is a "sacred obligation" for witnesses. Justice Wadhwa noted in *Swaran Singh v. State of Punjab* that admissible evidence is the foundation of a criminal prosecution. In direct or indirect evidence cases, witnesses are vital. However, hostile witnesses typically appear in the last stages of a trial. Witness protection is essential due to organised crime, terrorism, and other threats. The legal framework of India primarily depends on the "BNSS."¹ and "BSA"² For witness safety. This exonerates them. Prolonged legal processes, numerous interrogations, monetary incentives, threats, intimidation, or fear about one's own or loved ones' safety are causes for antagonism and retracting statements. The accused or unaffiliated parties may intimidate family or witnesses. The judiciary has often stressed witness protection. In the *Best Bakery* case, the Supreme Court of India decided that witnesses threatened or pressured into lying would not have a fair trial. Witness protection laws must be implemented to restore public trust in the criminal justice system and protect witnesses³. The international community, especially industrialised nations, has improved witness protection. Many nations, including Canada, Australia, and the US, passed witness protection laws decades ago. In contrast, Bangladesh and India are nations that lack extensive and detectable witness protection legislation.

"Section 124 of the *Bhartiya Sakshya Adhiniyam, 2023*" defines a witness. A witness is qualified to answer court questions. In other words, a witness can comprehend and answer legal enquiries. India launched its Witness Protection Scheme in December 2018. The key WPS provisions are examined in this essay. It lists plan barriers and suggests literal and figurative execution. A reasonable and successful criminal justice system requires witness protection. Witness protection in India gained attention in 2018 when the Ministry of Home Affairs created the Witness Protection Scheme. In organised crime, terrorism, corruption, and high-profile trials, witnesses are

¹ The *Bhartiya Nagarik Suraksha Sanhita, 2023*.

² The *Bhartiya Sakshya Adhiniyam, 2023*.

³ Sayyed, H., & Kaushal, A. (2022). Witness Protection in Contemporary Society. *Journal of Positive School Psychology*, 2329-2334.

vulnerable. This is why a system was created to protect them. The goal is to create an environment that encourages witnesses to provide honest, courageous evidence, improving the criminal justice system. When dealing with powerful people or criminal organisations, witnesses risk bodily violence, social dishonour, and financial penalties. Without adequate witness protection, the judicial system risks manipulation, tainted trials, and public distrust. India has a strong witness protection system to encourage witness involvement and secure their safety. The idea is to inspire witnesses to testify confidently and deliver accurate information. These outcomes are fair, unbiased, strengthen the rule of law, and deter crime. Effective witness protection protects witnesses and promotes society⁴.

2. Witness Needs Protection

The criminal justice system relies on proof of guilt beyond a reasonable doubt. The prosecution must prove the accused's guilt beyond a reasonable doubt in court. This is done through witness testimony. In *Swaran Singh v. State of Punjab*, Wadhwa J. said "admissible evidence is the bedrock of a criminal case." To determine direct or circumstantial evidence, witnesses are needed. In India, witnesses, despite their importance in court proceedings, suffer greatly mentally and physically⁵. In *Swaran Singh*, the court found "the witnesses...are a cacophony of harassment." A distant witness in a criminal trial may find a postponement. His frequent court appearances and their impact on him and his family are understandable. Postponing a criminal action indefinitely until the witness tires and recants is standard. Unscrupulous solicitors seek postponements to win over or tire witnesses. Abduction, bribery, and physical violence can also happen to witnesses. No one protects his interests. The accused's right to an open trial must be balanced with the victim's right to fair prosecution. An individual has the right to an open trial to inform the public about judicial procedures, and the accused has the right to be present⁶.

⁴ Jaggi, R. (2020). Witness Protection. *Supremo Amicus*, 18, 695.

⁵ Kramer, K. (2014). Witness protection as a key tool in addressing serious and organized crime. *Noudettu*, 25, 2022. 1

⁶ Parwez, Z., Sarangi, N. C., & Jabbal, D. (2023). Role of judiciary in protecting witnesses in the criminal justice system: a critical analysis. *International journal of membrane science and technology*, 10(2), 2089- 2093

The Supreme Court held in *NHRC v. State of Gujarat* that defendants and victims must be treated equitably throughout trials. Numerous scenarios require victim and witness protection⁷. Except for Sections 151 and 152 of the In, the legislation does not cover witness rights, which are vital to criminal prosecutions. Current legislation must be improved to protect witnesses. Criminal justice is hampered by hostile witness evidence. Acquittals have occurred in high-profile instances including Jessica Lal's murder and the Best Bakery case. Due to intimidation and external pressures, crime witnesses turn hostile in court. A proper and effective solution is needed to handle hostile witnesses and protect them from antisocial elements while testifying in court.

3. Witness Protection Under Indian Legislations:

i) Code of Criminal Procedure,1973 / The Bhartiya Nagrik Suraksha Sanhita, 2023:

The judgement of criminal cases is regulated by a comprehensive protocol outlined in the Code of Criminal Procedure⁸. Modern criminal law, particularly the Criminal Procedure Code, recognises the value of witnesses. A police officer can request a witness under Cr.P.C. Section 160. This clause reimburses reasonable travel expenses incurred by the individual. Section 284 of the Criminal Procedure Code allows the court to waive a witness's personal attendance and issue a commission to serve justice if the witness's presence is urgently needed for trial examination. The accused must also pay for the examination commission. Section 309 of the Criminal Procedure Code requires speedy investigations and prosecutions. Witness examination must continue daily unless the court adjourns for appropriate reasons. The criminal court can require the complainant or witness to refund reasonable court fees under Section 312 of the Cr.P.C. Payment will be made by the government.

⁷ Dandurand, Y., & Farr, K. (2012). A review of selected witness protection programs. Public Safety Canada.

⁸ Cryer, R., Robinson, D., & Vasiliev, S. (2019). An introduction to international criminal law and procedure. Cambridge University Press.

The Bhartiya Nagarik Suraksha Sanhita, 2023:

Section 191: In this section, a general offence is committed, the ordinary trial is held in the same local jurisdiction, and the witness will not be troubled or required to accompany the police officer to court.

Section 413: The presiding judge or magistrate can prohibit public admission to a case if an offence or crime has been committed. The camera trial helps witnesses testify effectively in court because they are less nervous. There is a case of “State of Maharashtra V. Dr Praful B. Desai.”⁹, in which the court ruled that video-conferencing evidentiary records are acceptable if witnesses and victims answer honestly without coercion.

Section 335: This section states that without the accused, the court cannot submit the evidence record, even if it is recorded in his presence. If the accused is a proclaimed offender, his final report and chief examination of the witness will be submitted. Courts promptly question witnesses to the material.

Section 319: For witness protection, the court or magistrate provides a commission for witness examination if justice requires it to question a witness whose participation causes undue delay, expense, or annoyance. This is especially true for presidents and governors. The court may order the prosecution to pay reasonable expenditures, including the accused's legal fees, in issuing the commission.

Section 179: Police investigating cases may ask anybody within or around the station with pertinent information to be present. Women under 15 and over 65 cannot attend outside their homes. For individuals attending beyond their home, the state can compensate reasonable fees. Several safeguards protect witnesses, especially those at risk of intimidation. “Section 180” lets police summon witnesses without intimidation. “Section 181” ensures uncoerced witness examination. To avoid external pressure, “Section 184” requires judges to record testimony.

⁹ AIR 2003 SC 2053.

“Section 185” lets police summon or inspect any case-related individual without a prior summons. These rules safeguard witnesses and keep their testimony honest in court.

ii) **“Bhartiya Nyaya Sanhita, 2023”:**

Section 72: While providing for specific circumstances under which the identity can be disclosed, this section prohibits publishing the identity of rape victims without court permission.

Section 232: If someone harasses, intimidates, or threatens to offer false evidence, that person can file a complaint against that person. The penalty is seven years in jail or a fine.

Section 229: If a person gives evidence in court or presents evidence before the law, they face seven years in prison or a fine, or if they lie or present false evidence during an investigation, they face three years in prison or a fine.

Section 227: When a witness lies under oath, knowingly lies, or expresses wrong beliefs. This is considered false evidence in court.

iii) **“The Bhartiya Sakshya Adhiniyam, 2023”:**

Section 2: This part discusses witness and documentary evidence, and the court has accepted the evidence even without witness testimony, which is abundant, so its belief should not be disturbed by practical situations that contradict the record.

Section 139: This section states that “evidence has to be weighed and not counted” and that no exact quantity is needed to prove a truth.

Section 137: The witness given under this section shall not be arrested, prosecuted, or asked to testify in any criminal process if obligated to answer. Nothing will stop him. One instance is called “Fisher V. Ronald.”¹⁰ In this case, the court dealt with the privilege afforded to a witness.

¹⁰ 138 E.R. 1104.

iv) The Unlawful activities (Prevention) Act, 1967:

Unlawful acts (Prevention) Act was created by Parliament to address particular people and organisations' illegal and terrorist acts. This law has two witness clauses. Section 22 of the Act penalises witness intimidation. A person who threatens, wrongfully restrains, or confines a witness is punished to jail. Section 44 of the Act protects witnesses. The court can hold proceedings in camera if it chooses. Witnesses have identity protection and address secrecy under this clause. The witness, his public prosecutor, or the court may apply under this clause if the witness's life is in danger¹¹. In addition, violators of this clause will be imprisoned.

v) The Terrorist and Disruptive Activities (Prevention) Act, 1987

Terrorist and Disruptive Activities (Prevention) Act of 1987 was passed directly to combat terrorism in India. According to Section 16, the Act protects witnesses. If requested by the designated court, sessions may be performed on camera. Subsection (2) allows the Designated Court to protect the witness's identity and address upon request by the witness, his prosecutor, or the court exercising suo moto cognisance. Anyone who breaches this will be punished.

vi) Prevention of Terrorism Act, 2002

The 2002 Prevention of Terrorism Act includes witness protection. According to Section 3.7.1, intimidating a witness with a violent act, illegally restricting or confining the witness, or performing any other unlawful conduct to threaten the witness is a prisonable offence. Section 30 of the Act protects witnesses. It allows the Special Court to hold hearings in camera. Subsection (2) allows the Special Court to protect the witness's identity and address upon request from the witness, their counsel, or the court exercising sui moto cognisance. Additionally, violators of this clause will face legal consequences.

¹¹ Mahawar, Sneha. "Terror of Unlawful Activities Prevention Act, 1967 (UAPA)." *Supremo Amicus* 21 (2020): 103.

vii) The National Investigation Agency Act, 2008

The National Investigation Agency was founded in 2008 to fight terrorism. Witness protection is also included by the NIA Act. Section 17 of the Act allows the Special Court to use cameras. In cases when the witness's life or the person in which the witness has an interest is in danger, the court may award "protection of identity" and "secret address of the witness" to the witness¹². The defendant, prosecutor, or court may ask for protection under this clause. Those who violate this clause will be imprisoned.

4. Witness Protection Scheme 2018

Public Interest Litigation prompted a 2018 witness protection program. In considering the PIL, Supreme Court Justices A.K. Sikri and S. Abdul Nazeer recognised the need for such a plan¹³. The Right to Life guarantees witnesses to testify in court without fear, compulsion, or threatening. The suggested strategy meets this requirement. This right is further established by PIL Article 21. The ruling emphasises the Witness Protection Scheme, which is enforceable in all Indian tribunals, states, and union territories. In this landmark ruling, the Supreme Court justices noted the following:

- i) In criminal trials, there are two parties: the accused and the victim. Witnesses help the court reach a fair decision and administer justice during the accused-victim dispute.
- ii) Several Law Commission of India reports, such as the 14th, 154th, 172nd, and 174th, emphasise the need for a witness protection plan before implementation.
- iii) The witness protection program should be broadened to include all serious acts, not only terrorism and sexual assaults. The Witness Protection Scheme, 2018 protects criminal cases by prohibiting offenders from intimidating or pressuring witnesses¹⁴. It also encourages others to come forward, either openly or implicitly, to provide the court an accurate account of an offence.

¹² Pandey, S. (2022). Anti-Terrorism Courts and Procedural (In) Justice: The Case of the National Investigation Agency (NIA) Special Courts in South Chhattisgarh, India. *Socio-Legal Review*, 16(1), 5.

¹³ Mahender Chawla & Ors. Vs. Union of India & Ors, 2018

¹⁴ Doak, J., Jackson, J., Saunders, C., Wright, D., Gomez Farinas, B., & Durdiyeva, S. (2021). Crossexamination in criminal trials towards a revolution in best practice?

This programming offers in-camera trial hearings, witness anonymity, and courtrooms that soothe fearful witnesses. The Witness Protection Fund and witness relocation due to life-threatening circumstances are also funded. The main concern is the scheme's sufficiency and implementation, as the main risk is the three-month witness protection, which limits the scheme's longevity. The second issue is that the program simply categorises witnesses, not offences. The scheme's principal goal is to protect witnesses and their identities, but it's unclear how to punish violators. Does failing to protect witness names have a penalty? The strategy may allow a witness to be relocated, depending on work, family, etc. The laudable plan protects witnesses countrywide against their second victimisation, but "witness protection." legislation is still needed. Standardised standards and explicit statutory measures are needed to safeguard witnesses.

Three sorts of "witnesses" are identified by this scheme:

Category A: When family members or witnesses are at risk during the investigation, trial, or afterward.

Category B: Specific cases when witnesses or their families' safety, reputation, or property is threatened during the inquiry or trial.

Category C: Moderate threats to the witness, his family, reputation, or property during the investigation, trial, or post-trial period¹⁵.

Provisions of the scheme of 2018

The Supreme Court of India sanctioned the WPS on December 5, 2018, under Articles 141 and 142 of the Indian Constitution. Mahender Chawla and Others v. Union of India and Others determined this landmark. A writ petition protected Asaram Bapu's alleged rape witnesses. The WPS was created to protect witnesses from fear and intimidation in court and criminal investigations, prosecutions, and convictions. Assuring witnesses' protection may boost their faith in the criminal justice system. The approach includes various measures to protect vulnerable witnesses in accordance with the stated goals. The first part defines "witness" and other scheme

¹⁵ Abhyankar, G., & Saha, A. (2021). Security of Witness in Criminal Justice System: Critical Evaluation of the Witness Protection Scheme 2018. Issue 4 Int'l JL Mgmt. & Human., 4, 3902

concepts. "Any individual who possesses information or documentation pertaining to any transgressions" is a plan witness¹⁶.

It also aligns with the UNODC document "Good Practises for the Protection of Witnesses in Criminal Proceedings Involving Organised Crime," issued in February 2008. The handbook defines a witness as "an individual who possesses material information that is crucial to the ongoing criminal or judicial proceedings." The fund would include state government funding, donations, CSR monies, and court or tribunal fees. Each district must evaluate these petitions through a permanent committee led by the District and Sessions Judge. The witness may submit the application and accompanying papers to the Member Secretary. The Member Secretary orders a Threat Analysis Report upon application. Five days have passed since the report's deadline. Police protection, CCTV systems near their homes, timely and unnecessary statement recording, in-camera trials, identity concealment and alteration, temporary relocation, financial aid, and vulnerable witness courtrooms are briefly discussed. The Supreme Court of India directed the Centre, all states, and Union Territories to implement the WPS by 2019, although some have not¹⁷. The system was implemented in a restricted number of states, including Odisha, Rajasthan, and Maharashtra.

5. Protection of Witnesses under Special Statutes

The Whistle Blowers Protection Act, 2011

Section 12 requires the Competent Authority to instruct government authorities to protect complaining witnesses in response to applications or information. It also required the complainant's identity and documentation to be kept secret until otherwise authorised by the proper authorities. The sanctions in Section apply to anybody who reveals a complainant's identify.

¹⁶ Nair, V. V. (2023). The status of victim protection in India: comparative analysis with international regime. *International Journal of Public Law and Policy*, 9(2), 130-147

¹⁷ Nanda, G. (2016). Delhi witness protection scheme, 2015-a new development. *International Journal for Research in Law*, 1(3).

The National Investigation Agency Act, 2008

Section 17 addresses witness protection:

- i) If recorded in writing, the Special Court may witness sessions in camera under this Act, despite any Code provisions.
- ii) The Special Court can hide witness identities and addresses for written reasons. If the court believes the witness's life is in imminent danger, it may do so in response to a witness application, the Public Prosecutor's motion, or its own initiative.

Juvenile Justice (Care and Protection of Children) Act, 2000

Section 21 of the Juvenile Justice (Care and Protection of Children) Act, 2000 prohibits disclosing a juvenile's identity or other pertinent information. The provision is as follows:

- i) No newspaper, magazine, news sheet, or visual media report on an investigation concerning the subjects may reveal the identity of a child in need of care and protection under this Act, including their name, address, school, or other relevant information. Photographs of the juvenile or kid may not be disseminated unless authorised by the investigating authorities in writing.
- ii) A person who violates paragraph (1) may be fined twenty-five thousand rupees.

The Unlawful Activities (Prevention) Amendment Act, 2004 Section 44 addresses witness protection:

- i) The special Court may choose to conduct proceedings in camera, despite the Code, for reasons to be documented in writing.
- ii) If a Special Court, acting independently or in response to a witness's application, Public Prosecutor, or witness, determines imminent danger, it may conceal the witness's identity and address for documented reasons.

6. Law Commission Reports and Other Initiatives Leading to Witness Protection in India

The Law Commission of India has stressed the need for robust witness protection. Law commissions and other relevant reports on witness protection are included below. Witness protection was originally mentioned in the 1958 Indian Law Commission 14th Report. The Law Commission included witness protections in its 154th Report. Both the 172nd and 178th Reports stressed witness protection against the accused. The National Police Commission (1980) highlighted witnesses' courtroom problems in its fourth report. Witness protection was emphasised by the Malimath Committee on Criminal Justice System Reforms (2003). Witness identity protection and witness protection programs are covered in the 198th Law Commission of India Report, 2006.

7. Judicial pronouncements

i) Zahaira Habibulla H. Sheikh & Another v. State of Gujarat and ors. (The Best Bakery Case):

Also known as The Best Bakery Case. This important verdict by the Supreme Court of India recognised witnesses' right to a fair prosecution under Article 21 of the Indian Constitution. However, witnesses are often pressured and intimidated into giving false testimony during trials. Thus, the state must safeguard the witness from these challenges.

ii) Mahender Chawla v. Union of India:

This groundbreaking verdict created a comprehensive system for witness protection in India through different avenues. TADA, POTA, and UAPA established witness protection laws, but only a few Indian states, like Delhi and Maharashtra, have implemented laws relevant to their territory¹⁸. However, there was no central witness protection law. The Union government ignored the Law Commission of India and Supreme Court's repeated requests for a comprehensive witness

¹⁸ Khamari, C. P., & Mishra, A. R. (2021). Efficacy of Witness: A Study from an International Perspective. Issue 5 Int'l JL Mgmt. & Human., 4, 2164

protection program. The respected Supreme Court approves the Witness Protection Scheme, 2018, in this crucial ruling. Article 141 and 142 of the Indian Constitution state that this system is "law" until Parliament passes relevant legislation.

iii) Smruti Tukaram Badade V. State of Maharashtra and Anr. (2019)¹⁹

A special leave petition before the SC and an important Vulnerable Witness definition observation. The court noted that this concept may not be limited to juvenile witnesses, suggesting that other witnesses may be vulnerable under certain circumstances. This remark has major ramifications for Indian judicial processes, especially those involving witnesses who may be harmed or intimidated. The "Delhi High Court" rules protect vulnerable witnesses. These standards define a vulnerable witness as a minor. Throughout the legal process, these principles safeguard vulnerable witnesses' rights and wellbeing.

iv) Asharam Bapu Case, 2017²⁰

People believe Asharam Bapu is the messenger of supernatural forces on earth, yet he was accused of multiple rapes where he begged women who attended his ashram for prayers for sexual favours. This rape witness was the same as the ladies who prayed to him. His guys and supporters intimidated all those ladies, and the investigating officers received threatening letters and calls to terminate the probe.

v) Nirmal Prem kumar V. State Rep. By Inspector of Police, 2024²¹

This lawsuit concerns the "POSCO Act, 2012" protecting minor victims. The Supreme Court stressed the necessity of safeguarding witnesses, especially youngsters, to ensure their safety and reliability.

¹⁹ AIR 1979 SC 185.

²⁰ Asaram Case Highlights Need for Witness and Victim Protection in India, available at: [Asaram Case Highlights Need for Witness and Victim Protection in India | Human Rights Watch \(hrw.org\)](#) (Last Visited on Mar. 29, 2024).

²¹ 2024 SC 221.



8. Conclusion and Suggestions

The 2018 Witness Protection Scheme governs witness protection in India. The 2018 Witness Protection Scheme includes the 198th Law Commission Report and Mali Math Committee proposals to protect witnesses. The criminal court system cannot ask witnesses to be independent and impartial without proper assistance. The 2018 Witness Protection Scheme failed witnesses. The court conviction rate fell from 50% in 2018 to 50.4% in 2019. Court convictions peaked at 59.2% in 2020, the highest in five years. Thus, the Witness Protection Programmer contributed to the higher conviction rate. Despite its flaws, the Witness Protection Scheme has helped India's criminal justice reforms. In this case, witnesses illuminate the facts and help the judge determine the truth. Justice requires fair and independent evidence from witnesses. The system must safeguard witnesses to protect the law's eyes and ears. A comprehensive criminal justice plan must include effective witness protection programs to protect persons essential to dismantling organised crime syndicates.

- i) Effective psychological treatment and assistance are essential for witnesses and their families who have experienced the trauma of seeing a crime. They cope with legal stress and mental hardship with these services. Witnessing a crime may be traumatic and have long-term implications on mental health. To help people through this tough period, competent and caring care is essential.
- ii) Witness safety is essential while sharing their account of an occurrence. This requires law enforcement or specialised protection groups to monitor their safety and respond quickly to threats or hazards. Such restrictions are the only way the government can ensure that witnesses who speak out are safe and can testify.
- iii) A comprehensive emergency response strategy is essential for addressing threats or security breaches against protected witnesses. To be relevant and successful, such a strategy should include a wide range of scenarios and be updated often.
- iv) Witnesses in criminal prosecutions typically suffer personal and professional problems. These individuals may get financial help for healthcare, education, and vocational

training. This assistance can help witnesses reconstruct their life and achieve stability following the legal system.

- v) To protect witnesses under protection from injury, exposure, or intimidation during court procedures, it is suggested to restrict public access to court sessions. Limiting courtroom attendance, vetting attendees, or using technology for remote access are examples.