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Preface

The Indian Journal of Legal Affairs and Research is a testament to our unwavering commitment to excellence in legal scholarship. This volume presents a curated selection of articles that reflect the diverse and dynamic nature of legal studies today. Our contributors, ranging from esteemed legal scholars to emerging academics, bring forward a rich tapestry of insights that address critical legal issues and offer novel contributions to the field. We are grateful to our editorial board, reviewers, and authors for their dedication and hard work, which have made this publication possible. It is our hope that this journal will serve as a valuable resource for researchers, practitioners, and policymakers, and will inspire further inquiry and debate within the legal community.

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Description

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RIGHT TO FAIR TRIAL AND WITNESS PROTECTION: A CRITICAL ANALYSIS OF INDIA'S EMERGING CRIMINAL JUSTICE FRAMEWORK

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Abstract

The right to a fair trial is a foundational principle of the Indian criminal justice system and is constitutionally connected with Articles 14 and 21 of the Constitution of India. Although the criminal process traditionally concentrates upon protecting the accused against arbitrary State action, a fair trial also requires that witnesses be able to participate in the administration of justice without fear, coercion, intimidation or undue influence. The vulnerability of witnesses, particularly in serious offences, organised crime, offences involving influential persons and cases involving social or communal tensions, can directly affect the integrity of evidence and consequently the legitimacy of the criminal trial. The problem of hostile witnesses has therefore become an important dimension of access to justice and fair trial jurisprudence. India historically addressed witness protection through scattered statutory provisions, judicial directions, Law Commission reports and policy recommendations. The Supreme Court's decision in *Mahender Chawla v. Union of India* gave constitutional recognition to the Witness Protection Scheme, 2018, and treated protection of witnesses as an essential component of a fair trial. The enactment of the Bharatiya Nyaya Sanhita, 2023 ("BNS"), the Bharatiya Nagarik Suraksha Sanhita, 2023 ("BNSS"), and the Bharatiya Sakshya Adhiniyam, 2023 ("BSA"), effective from July 1, 2024, has further transformed the statutory framework. Most significantly, section 398 of the BNSS imposes an express obligation upon every State Government to prepare and notify a Witness Protection Scheme, while section 530 facilitates electronic proceedings and examination of witnesses. At the same time, witness protection cannot become a mechanism for eliminating the accused's right to disclosure and effective cross-examination. This article critically examines the relationship between fair trial and witness protection, traces India's legislative and judicial development, evaluates the new criminal laws, and proposes an integrated rights-based framework involving threat assessment,

institutional independence, anonymity in exceptional cases, relocation, compensation, technological safeguards, expeditious trials and post-trial protection. It argues that witness protection is not an exception to fair trial but one of the institutional conditions necessary for a meaningful and truthful criminal trial.

Keywords: *Fair Trial; Witness Protection; Hostile Witness; Bharatiya Nagarik Suraksha Sanhita; Witness Protection Scheme.*

I. Introduction

The criminal justice system performs a fundamental constitutional function by determining whether an alleged offence has been committed, whether the accused is legally responsible for it, and what consequences should follow from the adjudication. The legitimacy of this process depends not merely upon conviction or acquittal but upon the fairness, transparency and reliability of the procedure through which the conclusion is reached. Police investigation, prosecution, judicial adjudication and correctional administration constitute interconnected components of this system. Evidence supplied by witnesses frequently forms the human link between the alleged occurrence and the adjudicatory process. Where witnesses are intimidated, threatened, induced, manipulated or prevented from appearing before the court, the consequences extend beyond the individual witness and affect the administration of justice itself. The uploaded research material similarly identifies witness testimony as a vital link in criminal adjudication and treats witness protection as an essential element of an effective criminal justice system.

The traditional adversarial model of criminal justice gives substantial importance to the presumption of innocence, burden of proof, legal representation and cross-examination. These safeguards protect the accused against wrongful conviction and arbitrary State power. Yet the adversarial process also creates a structural dependence upon witnesses who are required to narrate facts before the court and withstand cross-examination. A witness may therefore become vulnerable at different stages: during investigation, before commencement of trial, while attending court, during examination and cross-examination, and even after conclusion of proceedings. The absence of effective protection may cause a witness to withdraw, alter testimony, refuse to appear or become hostile.

Witness hostility presents a particularly serious challenge because the judicial system may possess formally adequate procedural rules while remaining practically incapable of obtaining

reliable evidence. The problem is not necessarily confined to physical threats. Economic pressure, social pressure, intimidation of family members, repeated adjournments, loss of wages, inconvenience, lack of privacy and fear of retaliation can collectively discourage truthful testimony. The research material supplied for this article accordingly recommends a comprehensive approach involving witness protection, assistance, welfare, anonymity, relocation and reduction of procedural delay.

The legal position has undergone an important transformation following the enactment of the three new criminal laws. The BNS, BNSS and BSA came into force on July 1, 2024. The BNSS contains a specific statutory provision dealing with witness protection. Section 398 requires every State Government to prepare and notify a Witness Protection Scheme for the State. This provision is significant because witness protection is no longer dependent exclusively upon judicial innovation or executive policy. It has acquired an express statutory foundation.

This article examines the relationship between the right to fair trial and witness protection, the development of Indian law through legislation and judicial decisions, the significance of the new criminal laws, and the continuing challenges in implementation. It adopts a doctrinal and analytical approach based upon constitutional provisions, statutory law, Law Commission recommendations, judicial decisions, the Witness Protection Scheme, 2018, and the recommendations contained in the two chapters supplied for consideration.

II. The Constitutional Foundation of the Right to Fair Trial

The right to a fair trial is not contained in a single constitutional provision. It emerges principally from Articles 14 and 21 and is supported by the procedural safeguards contained in Article 22 and other constitutional guarantees. Article 14 requires equality before law and equal protection of laws, while Article 21 prohibits deprivation of life or personal liberty except according to procedure established by law. The Supreme Court has progressively interpreted Article 21 to require a procedure that is fair, just and reasonable. In criminal proceedings, this principle encompasses an impartial adjudicator, meaningful legal representation, opportunity to challenge evidence, reasonable expedition and protection against arbitrary State action.

The concept of fair trial must, however, be understood as a multi-dimensional principle. It protects the accused from wrongful conviction, but it also protects the integrity of the judicial process. A proceeding in which witnesses are threatened into silence or induced to change their testimony cannot easily be described as a genuinely fair process. The Supreme Court's jurisprudence has therefore increasingly recognised that the interests of the accused, victim,

witness and society must be considered within the larger constitutional framework of justice.

In *Zahira Habibulla H. Sheikh v. State of Gujarat*, the Supreme Court emphasised that a fair trial is one in which the court is able to discover the truth and ensure that justice is not defeated through intimidation or manipulation of witnesses.[1] [1]The decision is particularly important because it demonstrated that witness intimidation is not merely a private dispute between an accused and a witness; it can constitute an attack upon the administration of justice. The Court's approach consequently shifted the discussion from a narrow concept of accused-centred fairness towards a broader understanding of institutional fairness.

III. Witnesses as Participants in the Administration of Justice

A witness ordinarily has no personal stake in the outcome of a criminal prosecution comparable to the accused or prosecution. Yet the witness may bear substantial personal costs in participating in the trial. Attendance may require travel, loss of employment, expenditure of money, repeated visits to court and exposure to intimidation. In serious cases, the witness may also fear physical harm to himself or herself or to family members.

The research material provided for this article emphasises that a person who appears before a criminal court performs an important public function. The witness supplies information necessary for the judicial determination of facts, and the effectiveness of the justice system may therefore depend upon the witness's willingness and capacity to testify truthfully. The research further recommends a “witness support culture” in which the State communicates that threats, coercion and intimidation against witnesses will be treated seriously.

Witness protection must therefore be understood broadly. It includes physical security, confidentiality of identity, relocation, secure transportation, accommodation, financial assistance, counselling, information regarding proceedings, protection of employment and, where necessary, post-trial protection. The purpose is not to manufacture evidence or favour the prosecution. Its purpose is to create conditions in which the witness can give evidence voluntarily and truthfully.

IV. Witness Hostility and the Crisis of Testimonial Evidence

The hostile witness problem illustrates the relationship between witness protection and fair trial most clearly. A witness may initially provide information to investigators but subsequently

[1] *Zahira Habibulla H. Sheikh v. State of Gujarat*, (2004) 4 SCC 158.

depart from the earlier version during trial. Such departure may arise from genuine inconsistency, fear, inducement, coercion, pressure from interested parties or other circumstances. The law must therefore distinguish between an unreliable witness and a witness whose testimony has been altered because of external pressure.

The BNS expressly addresses certain forms of interference with truthful testimony. Section 232 criminalises threatening a person with injury to person, reputation or property with the intention of causing that person to give false evidence. [2]This provision is particularly relevant to witness protection because it recognises that intimidation designed to manipulate evidence constitutes an independent wrong. The BNSS also provides a procedural mechanism under section 216 enabling a witness or other person to make a complaint regarding an offence under section 232 of the BNS.[3]

The statutory framework concerning false evidence has also been retained and reorganised under the BNS. Sections 227 to 236 deal with giving or fabricating false evidence and related offences, including threatening a person to give false evidence and using evidence known to be false.[2] The objective should not, however, be to treat every inconsistency as perjury. A witness may be mistaken, confused, traumatised or unable to recall events accurately. Criminal proceedings concerning false testimony must therefore be invoked carefully and according to law.

The deeper problem is preventive rather than punitive. A witness who has already been threatened may require protection before appearing in court. The uploaded research therefore recommends pre-trial threat assessment, protection of identity at an appropriate stage, relocation where necessary, electronic testimony and State-funded protective measures.

V. Legislative and Institutional Development of Witness Protection in India

India's witness protection framework developed gradually through judicial decisions, Law Commission reports, committee recommendations and executive schemes. The Law Commission's Fourteenth Report, the 154th Report, the 172nd Report, the 178th Report and the 198th Report each contributed to the broader discussion concerning criminal justice reform, witnesses and procedural safeguards. The 198th Law Commission Report, titled *Witness*

[2] The Bharatiya Nyaya Sanhita, No. 45 of 2023, §§ 227–236, especially § 232 (India). The BNS came into force on July 1, 2024. The statutory provisions include offences concerning giving or fabricating false evidence and threatening a person to give false evidence. See India Code, *The Bharatiya Nyaya Sanhita, 2023*.

[3] The Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, § 216 (India) (providing a procedure for a witness or other person to complain concerning an offence under § 232 of the Bharatiya Nyaya Sanhita).

Identity Protection and Witness Protection Programmes, was particularly significant because it examined mechanisms for protecting the identity and physical security of witnesses.

The Law Commission recognised that witness protection raises a difficult legal question. On one side lies the need to protect a witness from intimidation; on the other lies the accused's right to know the case against him and effectively cross-examine prosecution witnesses. The solution therefore cannot be an unrestricted system of secret evidence. Protective mechanisms must be proportionate to the threat and compatible with the essential requirements of a fair trial.

The Malimath Committee also recognised the importance of witness protection and recommended the incorporation of measures capable of strengthening truth-finding within India's adversarial criminal justice structure. The research material provided for this article similarly advocates a combination of legislative and institutional mechanisms rather than reliance upon a single protective measure.

VI. Judicial Recognition of Witness Protection

Indian judicial decisions have played a central role in establishing the constitutional importance of witness protection. In *Zahira Habibulla H. Sheikh*, the Supreme Court treated witness intimidation and unfair trial conditions as matters going to the heart of judicial legitimacy. The decision demonstrated that the constitutional obligation to conduct a fair trial may require the court to intervene where the ordinary process is being undermined.

In *State of Maharashtra v. Dr. Praful B. Desai*, the Supreme Court recognised that evidence could, in appropriate circumstances, be recorded through video conferencing. [4] The decision is important for contemporary witness protection because technology can reduce the need for vulnerable witnesses to appear physically in the same courtroom as the accused. The principle has acquired greater statutory significance under section 530 of the BNSS.

In *Sakshi v. Union of India*, the Supreme Court considered procedural safeguards for vulnerable witnesses and victims and recognised the need to adapt trial procedures so that the judicial process does not unnecessarily expose vulnerable persons to further trauma.[5] These developments indicate that fair trial does not require every witness to be physically confronted with every aspect of the traditional courtroom environment in every circumstance. Rather, the procedure must preserve the substantive right of cross-examination while permitting

[4] *State of Maharashtra v. Dr. Praful B. Desai*, (2003) 4 SCC 601.
[5] *Sakshi v. Union of India*, (2004) 5 SCC 518.

appropriate protective arrangements.

The decision in *Vinod Kumar v. State of Punjab* also remains relevant to the problem of delay.[6]The Supreme Court criticised situations in which there is an excessive gap between examination-in-chief and cross-examination because prolonged intervals may increase the possibility of witnesses being influenced and can impair the integrity of the evidence. The witness protection problem is therefore closely connected with judicial case management.

VII. Witness Protection Scheme, 2018 and *Mahender Chawla*

The Witness Protection Scheme, 2018 represented a major institutional development. In *Mahender Chawla v. Union of India*, the Supreme Court approved the Scheme and directed that it operate until appropriate legislation was enacted.[7] The Court recognised that the right to a fair trial includes the ability of witnesses to depose fearlessly and without intimidation.[7]

The Scheme adopts a threat-based approach. Protection is not necessarily identical for every witness; rather, the nature and extent of protection depend upon the assessment of the threat. This approach corresponds closely with the recommendations contained in the uploaded research, which reject an impractical blanket approach and advocate classification and prioritisation according to the nature and seriousness of the threat.

The Scheme provides for measures including protection of identity, change of identity, relocation, installation of security devices, escort, temporary accommodation, financial assistance and other appropriate measures depending upon the circumstances. The underlying principle is that protection should be tailored to the individual threat rather than imposed through a rigid uniform formula.

The Scheme also reflects an important institutional principle: witness protection should not be left entirely to the discretion of the investigating officer. Threat assessment and protection decisions require institutional accountability, documentation and judicial oversight. The uploaded research similarly recommends a specialised Witness Assistance Department or independent institutional cell capable of assessing protection requirements and coordinating with relevant agencies and civil-society organisations.

[6] *Vinod Kumar v. State of Punjab*, (2015) 3 SCC 220.
[7] *Mahender Chawla v. Union of India*, (2019) 14 SCC 615.

VIII. Section 398 of the BNSS: Statutory Recognition of Witness Protection

The most important development under the new criminal laws is section 398 of the BNSS. It provides that "Every State Government shall prepare and notify a Witness Protection Scheme for the State with a view to ensure protection of the witnesses." [8] The provision came into force with the BNSS on July 1, 2024.

Section 398 is significant for three reasons. First, it converts witness protection from a primarily scheme-based and judicially developed mechanism into an express statutory obligation. Secondly, it places the immediate responsibility upon State Governments to create and notify a scheme. Thirdly, it provides a statutory foundation upon which courts can examine whether appropriate protection mechanisms exist and are being implemented.

The statutory obligation is particularly important because the Supreme Court in February 2026 directed States and Union Territories that had not complied with section 398 to notify Witness Protection Schemes.[9] The direction demonstrates that enactment alone does not guarantee implementation. Institutional compliance remains essential.

Section 398 should therefore be interpreted together with the Witness Protection Scheme, 2018, constitutional fair-trial jurisprudence and applicable State-level arrangements. The provision establishes the statutory duty, while the operational details must ensure threat assessment, confidentiality, protection, financial support, relocation and monitoring.

IX. The New Criminal Laws and Witness Protection

The BNS, BNSS and BSA collectively create a framework relevant to witness protection. The BNS addresses offences affecting the integrity of testimony, including false evidence and threats designed to procure false evidence.[2] The BNSS establishes the State's obligation to formulate a Witness Protection Scheme under section 398, creates procedural mechanisms concerning witness-related offences, and facilitates electronic proceedings under section 530.[3] The BSA provides the evidentiary structure within which witness testimony is examined, cross-examined and evaluated.

The BSA expressly retains the sequence of examination-in-chief, cross-examination and re-examination. Section 143 provides that witnesses are ordinarily first examined-in-chief, then

[8] The Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, § 398 (India). Section 398 expressly requires every State Government to prepare and notify a Witness Protection Scheme for the State.

[9] *In Re: To Issue Certain Guidelines*, Order dated Feb. 5, 2026 (Supreme Court of India), directing concerned States and Union Territories to comply with the mandate of § 398 of the BNSS by notifying Witness Protection Schemes.

cross-examined if the adverse party so desires, and thereafter re-examined where appropriate.[10] Cross-examination remains an essential component of adversarial criminal procedure because it allows the opposing party to test the truthfulness, reliability and credibility of evidence. The BSA therefore reinforces the need to design witness protection in a manner that protects the witness without destroying the accused's meaningful opportunity to challenge testimony.

Section 530 of the BNSS provides that trials, inquiries and proceedings, including examination of complainants and witnesses and recording of evidence, may be conducted through electronic communication or audio-video electronic means.[11] The Supreme Court has recognised that section 530 applies to complainants and witnesses as well as accused persons and that electronic proceedings are a permissible procedural mode rather than an automatic requirement in every case.[12]

The provision is particularly valuable for vulnerable witnesses. A witness may, where legally and technologically appropriate, give evidence without physically entering the same courtroom environment as the accused. Technology can also reduce travel, prevent unnecessary exposure and facilitate protection in cases where physical attendance creates substantial risk. However, electronic testimony should not be treated as a substitute for judicial assessment. The court must ensure authenticity, reliability, effective communication, adequate recording and meaningful cross-examination.

X. Witness Anonymity and the Right of the Accused to Confront Evidence

Witness anonymity presents one of the most difficult questions in witness protection. Complete secrecy may protect a witness against intimidation but can simultaneously affect the accused's ability to investigate the witness's background, challenge credibility and conduct an effective defence. The constitutional balance therefore requires proportionality.

The appropriate question is not whether witness identity can ever be protected, but under what circumstances and subject to what safeguards identity may be withheld or partially protected.

[10] The Bharatiya Sakshya Adhiniyam, No. 47 of 2023, §§ 142–149 (India). Section 143 preserves the sequence of examination-in-chief, cross-examination and re-examination, while §§ 148–149 regulate important aspects of cross-examination.

[11] The Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, § 530 (India) (permitting trials, inquiries and proceedings, including examination of complainants and witnesses and recording of evidence, to be conducted through electronic communication or audio-video electronic means).

[12] *Satender Kumar Antil v. Central Bureau of Investigation*, Judgment dated July 16, 2025 (Supreme Court of India), discussing the scope of § 530 and recognising that the provision extends to complainants and witnesses while treating electronic proceedings as a permissible procedural mode.

The Law Commission's approach, reflected in the research material, contemplated categorisation of witnesses and judicial scrutiny of anonymity. The research further recommends that identity protection should be considered before charge-sheeting in appropriate cases and that the form of protection should depend upon the particular threat.

Anonymity should consequently be an exceptional protective measure rather than an ordinary feature of criminal trials. Where anonymity is considered necessary, the court should undertake a structured assessment of the seriousness of the threat, the importance of the evidence, alternative protective mechanisms and the degree to which anonymity would affect the accused's ability to defend the case. Protective measures should be no broader than necessary.

XI. Technology as an Instrument of Witness Protection

Technology has changed the practical possibilities of witness protection. Video conferencing, secure electronic communication, protected recording facilities, encrypted databases and controlled access to witness information can reduce several forms of risk. Section 530 of the BNSS provides statutory recognition to electronic modes of criminal proceedings.[11]

The use of technology should, however, be accompanied by procedural safeguards. A remote witness must be able to hear and understand questions, communicate freely, receive appropriate assistance and respond without external coercion. The court must also be satisfied that the witness is not being coached or threatened from the location from which testimony is being given.

The research material specifically recommends video-link and tele-linked procedures, including measures such as appropriate separation of witness and accused, voice or image distortion where justified, and secure arrangements for recording evidence. These recommendations remain relevant under the new statutory framework, although their implementation must conform to judicial orders and applicable rules.

XII. Procedural Delay and Witness Protection

Witness protection cannot be separated from the problem of delay. A protection programme may provide security, relocation and confidentiality, but if a criminal trial continues for years with repeated adjournments, the witness may remain under pressure for an unnecessarily prolonged period. The Witness Protection Scheme itself cannot achieve its objective unless trials are effectively managed.

The uploaded research strongly emphasises avoidance of unnecessary adjournments and

recommends that witnesses present in court should ordinarily be examined on the scheduled date. It also recommends judicial monitoring, preparation of the case papers in advance, coordination among the prosecution and defence, and appropriate consequences for unnecessary delay.

The principle of expeditious trial forms part of fair procedure under Article 21. At the same time, expedition cannot mean sacrificing the accused's right to prepare a defence or preventing legitimate cross-examination. The appropriate solution is effective case management: witnesses should not be repeatedly summoned because counsel or parties are unprepared, while genuine reasons requiring adjournment must continue to receive judicial consideration.

XIII. Witness Welfare as an Element of Fair Trial

Physical security is only one aspect of witness protection. A witness may face economic loss, psychological stress, social isolation and practical difficulties in attending court. A comprehensive protection regime must therefore incorporate witness welfare.

The research material recommends reimbursement of expenses, insurance or compensation mechanisms, secure waiting facilities, transportation, lodging, counselling and other assistance. Such measures recognise that a witness should not be economically penalised merely because the State requires his or her participation in criminal adjudication.

Witness welfare is particularly significant for vulnerable persons, persons from economically weaker backgrounds, persons with disabilities, children, elderly witnesses and persons whose employment or residence makes repeated court attendance difficult. A witness-friendly court environment should provide dignity, privacy, clear information regarding the proceedings and protection from unnecessary contact with the accused or persons associated with the accused.

The concept of witness welfare should also extend to defence witnesses. Witness protection cannot become synonymous with prosecution protection. A fair trial requires that any witness facing a genuine threat because of participation in criminal proceedings should be eligible for appropriate protection irrespective of which party calls the witness.

XIV. Special Protection for Vulnerable Witnesses

Children and vulnerable victims require additional safeguards because the ordinary courtroom environment may itself become intimidating. The principles developed in *Sakshi* and subsequent judicial practice demonstrate the legitimacy of procedural adaptations that protect vulnerable persons while preserving the essential requirements of fair adjudication.[5]

The Protection of Children from Sexual Offences Act, 2012 also contains child-friendly procedural mechanisms. These statutory protections demonstrate that witness protection cannot be isolated from the broader architecture of vulnerable-person justice. The objective is to prevent the criminal process from becoming a second source of trauma.

In appropriate cases, protective screens, separate waiting areas, video-link testimony, controlled courtroom access, restrictions upon unnecessary disclosure and support persons may be considered. Such measures should be tailored to the vulnerability of the witness and the nature of the proceeding rather than applied mechanically.

XV. Bail, Witness Security and Fair Trial

The relationship between bail and witness protection requires careful constitutional balancing. Bail is fundamentally connected with personal liberty and the presumption of innocence. At the same time, courts may consider whether release of an accused creates a genuine risk of intimidation, interference with evidence or obstruction of justice.

The Supreme Court's recent jurisprudence has clarified that the Witness Protection Scheme operates alongside, rather than as a replacement for, established principles governing bail. In a 2025 decision concerning the Witness Protection Scheme, the Court emphasised that the Scheme was not conceived as a substitute for the statutory considerations governing grant or cancellation of bail.[13] This distinction is important because witness protection should not automatically justify deprivation of liberty. Courts must independently apply the law relating to bail while considering legitimate risks to witnesses and the integrity of the proceedings.

At the same time, where credible evidence demonstrates intimidation or interference with witnesses, courts may impose appropriate conditions within the framework of law. The research material similarly recommends that witness-security considerations be brought to the court's attention when bail applications are considered.

XVI. Critical Analysis of the Existing Framework

The Indian framework has made significant progress, but several structural problems remain. The first is implementation. Section 398 of the BNSS creates a statutory obligation, but a legal mandate is effective only when supported by institutional structures, personnel, funding and

[13] *Mahender Chawla v. Union of India*, (2019) 14 SCC 615; see also Supreme Court of India, Judgment dated Sept. 2, 2025, discussing the relationship between the Witness Protection Scheme, fair trial and bail considerations.

accountability. The Supreme Court's 2026 direction concerning States and Union Territories that had not notified schemes demonstrates that statutory enactment does not automatically translate into operational compliance.[14]

The second difficulty is institutional independence. Witness protection may fail if the agency responsible for protecting witnesses lacks resources, confidentiality or independence. The research material therefore recommends a specialised Witness Assistance Department or independent cell capable of undertaking threat assessment and coordinating protective services.

The third difficulty is the absence of uniformity in implementation. Threat assessment should be based on transparent criteria rather than arbitrary discretion. A witness facing a specific and credible threat should receive protection proportionate to that threat. Conversely, blanket protection for every witness may be financially and administratively unsustainable.

The fourth difficulty concerns confidentiality. Witness information must be securely maintained. Unauthorised disclosure can defeat an otherwise effective protection programme. Access to sensitive information should therefore be restricted to officials and judicial authorities who require it for legitimate purposes.

The fifth difficulty concerns post-trial protection. Witnesses may continue to face threats after conviction or acquittal, particularly where the accused or associates remain capable of intimidation. The uploaded research accordingly recommends continuing support and protection after trial where circumstances justify it.

XVII. Recommendations for a Rights-Based Witness Protection Framework

India would benefit from developing a comprehensive and integrated national framework operating through section 398 of the BNSS and State Witness Protection Schemes. The framework should establish minimum national standards while permitting States to develop operational mechanisms according to local conditions. The scheme should clearly define eligibility, threat categories, decision-making authority, review mechanisms, emergency protection, relocation, financial assistance, confidentiality and post-trial protection.

A structured threat-assessment mechanism should become the foundation of protection. The assessment should consider the nature of the offence, influence and capacity of the accused or associated persons, previous threats, vulnerability of the witness, risk to family members,

[14] Law Commission of India, *Fourteenth Report on Reform of Judicial Administration* (1958).

geographical circumstances and the possibility of interference with evidence. The decision should be recorded with reasons and should be periodically reviewed.

An independent Witness Assistance and Protection Cell should be established at the appropriate State level. Its functions should include receiving applications, undertaking threat assessments, coordinating police protection, arranging relocation, providing temporary accommodation, maintaining confidential records, facilitating transportation and ensuring access to welfare services. Coordination with legal services authorities, social welfare institutions and suitably regulated civil-society organisations may strengthen the system.

Witnesses should also be given a defined catalogue of procedural and welfare rights. These should include information about the progress of the case, reasonable notice of hearings, protection from intimidation, respectful treatment, secure waiting facilities, transportation and lodging where required, reimbursement of reasonable expenses, access to counselling and information regarding available protective measures. The research material specifically proposes such a rights-based framework.

Anonymity should remain an exceptional measure governed by judicial oversight. Where disclosure of identity creates a serious and demonstrable threat, the court should consider whether alternative safeguards such as video-link testimony, protective screens, relocation or restricted access to personal information can sufficiently protect the witness. Only where less restrictive measures are inadequate should stronger anonymity measures be considered, and even then the accused's ability to conduct an effective defence must remain a central consideration.

The criminal courts should strengthen case management to reduce repeated adjournments. Once a witness is present, unnecessary postponement should ordinarily be avoided. Courts should ensure the readiness of the prosecution, defence and necessary documents before the scheduled hearing. Technology should be used to track witness attendance and identify recurring causes of adjournment. This recommendation directly reflects the concern expressed in the uploaded research that unnecessary delay undermines witness confidence and the effectiveness of protection.

The new electronic-proceedings framework under section 530 of the BNSS should be used more systematically in appropriate cases. Vulnerable witnesses who would face substantial hardship or risk by attending court physically may, subject to judicial safeguards, be examined through secure audio-video facilities. Such evidence must preserve the essential requirements of authentication, judicial supervision and effective cross-examination.

Finally, witness protection should be treated as a continuing responsibility rather than a temporary security arrangement. Protection may be necessary before trial, during investigation, during examination and cross-examination, during the pendency of appeal and, in appropriate circumstances, after conclusion of the proceedings. The duration should depend upon the continuing threat rather than an automatic termination at judgment.

XVIII. Conclusion

The relationship between fair trial and witness protection demonstrates that the interests of the accused, witness, victim and society cannot be treated as mutually exclusive categories. The accused is entitled to the presumption of innocence, effective legal representation, disclosure of the case and meaningful opportunity to challenge evidence. The witness, however, must also be capable of appearing before the court without fear, coercion or intimidation. A criminal justice system that protects only formal procedural rights while permitting witnesses to be silenced cannot fully achieve the constitutional promise of fair adjudication.

India's legal framework has travelled a substantial distance from a situation in which witness protection was addressed primarily through scattered provisions and judicial intervention. The Law Commission reports and the Malimath Committee contributed to the conceptual development; *Zahira Habibulla H. Sheikh* established the constitutional importance of fair trial and witness integrity; *Praful B. Desai* and *Sakshi* demonstrated the potential of procedural innovation; and *Mahender Chawla* gave operative force to the Witness Protection Scheme, 2018.

The enactment of the BNS, BNSS and BSA has created the next stage of this development. Section 398 of the BNSS is particularly significant because it expressly places a duty upon every State Government to prepare and notify a Witness Protection Scheme.[8] Section 530 creates additional possibilities for protected and technologically enabled participation of witnesses.[11] The BNS strengthens the substantive response to intimidation designed to manipulate evidence, while the BSA preserves the centrality of examination and cross-examination within the evidentiary process.[2] [10]

The central challenge now lies in implementation. Witness protection must not remain a paper entitlement. It requires trained personnel, financial resources, institutional independence, confidentiality, judicial oversight, threat assessment and effective coordination among police, prosecution, courts and legal-services institutions. The recommendations emerging from the supplied research—particularly classification of witnesses according to threat, institutional

witness assistance, anonymity in appropriate cases, relocation, welfare support, expeditious hearings, technological protection and post-trial assistance—remain relevant within the new statutory environment.

Ultimately, witness protection should be understood not as a privilege granted to witnesses or as an instrument for securing convictions, but as a constitutional and institutional mechanism for preserving the reliability of the criminal process. A fair trial requires that the accused be able to defend himself, but it equally requires that truthful evidence be capable of reaching the court. The legitimacy of criminal adjudication therefore depends upon achieving a principled balance between confrontation and confidentiality, liberty and security, procedural rights and the search for truth. The success of section 398 of the BNSS will ultimately depend upon whether this balance is translated from statutory language into an effective, accessible and accountable system of witness protection.

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