

WITNESS PROTECTION MECHANISM UNDER INDIAN LEGAL FRAMEWORK: AN ANALYSIS

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ABSTRACT

Compared to other jurisdictions, a comprehensive analysis of the mechanisms for the protection of witnesses in India is provided. The research paper addresses the worrying vulnerability of witnesses in the Indian Criminal Justice System, where threats, intimidation and harassment are frequent, resulting in weakened trials and unjust results. Despite some recent developments, India's legal framework does not yet have the institutionalized infrastructure necessary to protect effective witnesses. The study compared India with the US, which has an extensive witness security program, the UK and other countries with a wide range of long-standing protection plans and highlighted the importance of structured government programs to ensure the safety of witnesses. The analysis looks at the different approaches adopted by these countries, pointing out that jurisdictions such as the US provide multiple security options such as relocation, financial support and new identity. At the same time, India is still largely dependent on measures. The comparisons reveal essential gaps in the framework, particularly the need for dedicated agencies and resources to systematically protect witnesses. The study advocates urgent reforms of the Indian legal system, drawing on best international practice. Establishing a robust witness protection program will not only improve the fairness of trials. Still, it will also encourage more witnesses to be present without fear, thereby strengthening the rule of law and the provision of justice.

Keywords: Witness, Jurisdictions, Justice, Protection, System, Harassment.

1. INTRODUCTION

Witness protection is a cornerstone of a fair justice system and a fundamental tool in safeguarding the lives of those who step forward to testify. With a diverse range of criminal activities that often threaten the safety of witnesses, from organized crime to terrorism, witness protection becomes paramount. The legal framework of India primarily depends on the “BNSS.”¹ and “BSA”² For witness protection. There is a notable need for a dedicated and comprehensive witness protection system even though these laws address witness protection. The practical implementation of witness protection faces multifaceted challenges in India. Lack of infrastructure, inadequate funding, and lack of coordination among law enforcement agencies have contributed to properly implementing witness protection measures. In addition,

¹ The Bharatiya Nagarik Suraksha Sanhita, 2023.

² The Bharatiya Sakshya Adhiniyam, 2023.

a standardized protocol for absenteeism and the absence of a centralized monitoring authority have added to the difficulties of assessing the threats of witnesses.

Implementing comprehensive measures has been gradual since the witness protection concept was recognized in India. In India, an essential aspect of witness protection for witnesses involves providing for a change of identity. For example, in cases with a criminal conviction or a case related to a high-profile person, the witnesses may also be given names, addresses, or occupations to prevent any attempt by the accused or their associates to impersonate them.

In addition, physical protection is a priority for all witnesses. Law enforcement agencies can provide round-the-clock support to ensure that witnesses are kept safe during and after trial, and this is especially important in cases where the witness is considered to be at high risk of harm. Another aspect of witness protection is financial assistance. To support those witnesses who face economic challenges while cooperating with the legal system, they can provide financial assistance to all those witnesses. This helps reduce witness's potential concerns about retaliation affecting their livelihoods. In some cases, witnesses may be transferred to different areas to keep them away from the accused. This form of geographical relocation is a strategic measure for reducing a witness's location and likelihood of being targeted, thereby increasing his overall security.

Witness protection programs exist in India; despite their existence, there are challenges and gaps in their implementation. It creates a safe environment for witnesses to come forward or testify without fear of retaliation and requires a comprehensive or coordinated effort by law enforcement, judiciary, or other relevant authorities to ensure the effectiveness of these programs. **"Section 124 of the Bhartiya Sakshya Adhiniyam, 2023"** defines a witness. A witness is a person who possesses the necessary competence to comprehend the questions put forth by the court. In other words, a witness is someone who can understand and answer questions related to a legal case. The role of a witness is crucial in determining the outcome of a case as their testimony is considered evidence. According to this Section, any individual, regardless of their background or qualifications, is eligible to give testimony provided that they possess the mental capacity to comprehend the questions and provide coherent responses. Exceptions are made only in cases where the witness cannot understand or respond effectively.

During the hearing of a special leave petition in the case of **"Smruti Tukaram Badade V. State of Maharashtra and Anr. (2019)"**³, the SC made an interesting observation regarding the definition of Vulnerable Witness. The court remarked that this definition may not be restricted to only child witnesses, implying that other witnesses could also be considered vulnerable under certain circumstances. This statement has significant implications for legal proceedings in India, particularly those involving witnesses who may risk harm or intimidation due to their testimony. These lines pertain to the "Delhi High Court" guidelines to safeguard vulnerable witnesses. According to these guidelines, a witness who is considered vulnerable is a child who has not yet reached the age of 18. These guidelines aim to protect the rights and welfare of these vulnerable witnesses throughout the legal process.

In the "Bhartiya Sakshya Adhiniyam," it is worth noting that the term vulnerable witness " is not explicitly mentioned. However, this is not the case in the United Kingdom, where the "Youth Justice and Criminal Evidence Act 1999" outlines specific measures to safeguard vulnerable witnesses. In a court of law, vulnerable witnesses refer to individuals who face additional challenges that render them unable to give evidence or testify. These challenges include mental disorders, physical handicaps, intellectual impairments, or being under 18 years of age. These individuals require special consideration and protection to participate in the legal process without undue stress or harm. A child may be allowed to give testimony in court if the court determines that they are capable of providing rational and coherent responses to questions. This is, however, subject to the condition that the child is not a toddler. An exciting example of this is seen in the case of **"Dhanraj and Ors V. State of Maharashtra (2002)"**⁴, where a witness was a child in the eighth grade. The case is noteworthy because it highlights that the court may consider the testimony of minors in some instances, provided they can provide reliable evidence. In a landmark ruling, the SC of the country declared that a child in the eighth grade with a reasonable level of intelligence and comprehension could be deemed competent enough to understand the facts and respond to the questions. As a result, the court permitted the child's testimony to be considered. Amid mounting concerns about the need to protect vulnerable witnesses in criminal proceedings, the SC made a landmark decision in 2017 ordering the immediate creation of at least two deposition centers in every jurisdiction under the purview of each High Court. These centers, specifically designed to provide a secure and supportive environment for witnesses who may be at risk of harm or intimidation, represent a critical step forward in ensuring that the justice system is accessible to all

³ AIR 1979 SC 185.

⁴ AIR 2002 SC 3302.

individuals, regardless of their background or circumstance. By offering a range of tailored support services, including emotional counselling, legal assistance, and physical protection, these centers play a vital role in empowering vulnerable witnesses to come forward and share their testimonies, helping ensure that justice is served equitably and transparently. Individuals who are witnesses and considered vulnerable due to various reasons, such as age, race, gender, or mental health, are often subjected to the term secondary victimization. This refers to the additional harm or distress they may experience while participating in legal proceedings or recounting their experiences to authorities. Secondary victimization can manifest in different ways, including physical mistreatment, verbal abuse, or emotional trauma that can have long-lasting effects on the individual well-being. It is essential to recognize and address the issue of secondary victimization to ensure a fair and just legal system that protects all individuals, regardless of their vulnerability. It is crucial to acknowledge that individuals who have been subjected to sexual violence often undergo intense emotional distress due to the mistreatment they face from institutions or individuals following the incidents. It is our responsibility to raise awareness about this issue and support these survivors, helping them heal and move forward with their lives. Owing to the complexity and sensitivity of the situations they have encountered many people often struggle to provide their testimonies. The emotional and psychological impact of these experiences can be overwhelming, leading to a reluctance to share their stories.

Witnesses have firsthand knowledge of a crime or an event and can provide critical evidence in legal proceedings. In the legal system, witnesses play a crucial role in helping to establish the truth and determine the outcome of a case. However, in India, witness protection is an issue that is often overlooked and under-discussed. Despite the fact that witnesses are frequently subjected to threats, intimidation and harassment, there is a lack of attention given to their safety and well-being. This is unfair and goes against the principles of justice and fairness the legal system builds upon. The government must raise awareness about this issue and ensure that witnesses are provided with the protection and support they need to feel safe and secure throughout the legal process.

2. LEGISLATIVE FRAMEWORK

2.1 “Bhartiya Nyaya Sanhita, 2023”:

- a) **“Section 72”:** While providing for specific circumstances under which the identity can be disclosed, this section offers the provision barring the publishing of the identity of the victim of offences of rape, and without prior permission of the court, there must not be any printing or publishing of any matter.
- b) **“Section 232”:** This section states that if a person has harassed or intimidated another person or has threatened that person to give false testimony, that person can file a complaint against that person or against that person. There shall be imprisonment of seven years or a fine or both.
- c) **“Section 229”:** If any person gives any evidence in the trial or presents any evidence before the law, then that person gets imprisonment of seven years or a fine or both, or if there is any usual case going on against a person or at the time of investigation the person speaks falsely or presents false evidence then the person may get three years of imprisonment or may also face fine.
- d) **“Section 227”:** According to this Section, when a witness provides false statements while under oath, deliberately makes untrue statements, or expresses beliefs they know to be inaccurate. This act is considered to give false evidence in legal proceedings.

2.2 “The Bhartiya Nagarik Suraksha Sanhita, 2023”:

- a) **“Section 191”:** This section deals with the cases where a general offence is committed, and the ordinary trial is conducted in the same local jurisdiction, and it is also said that the witness will not be subjected to any trouble in case of necessity, or the witness will not be required to accompany the police officer on the way to the court.
- b) **“Section 335”:** In this section, it is stated that without the accused, the court can’t submit the evidence record even if the evidence is recorded in the presence of the accused or if he is a proclaimed offender, his final report will be submitted, and the chief examination of the witness will be done if the accused is a proclaimed offender. To the material, the court examines the witness as quickly as possible.
- c) **“Section 413”:** The principle of investigation in this section is that if an offence or crime has been committed, then the sitting judge or magistrate has the power to deny the public access to any particular case. The

witnesses' benefit from the camera trial because they will not be so cautious or hesitant to testify clearly in the open court. There is a case of "State of Maharashtra V. Dr Praful B. Desai."⁵, in which the court held that evidence records are admissible by way of video conferencing, but witnesses and victims have to give an honest answer without any external pressure.

- d) **Section 332:** The formal evidence of a witness may be submitted by affidavit and, subject to valid exceptions, can be read in any inquiry, trial, or proceeding, and the court may summon and examine the witness regarding the facts in the affidavit at its discretion or upon request by the prosecution or accused.
- e) **Section 319:** In this section, for the protection of witnesses, the court or magistrate issues a commission for a witness examination if justice finds it necessary to examine a witness whose attendance causes unreasonable delay, expenses, or inconvenience. This is particularly applicable to high-ranking officials such as the president or governor. In issuing the commission, the court may also direct that reasonable expenses, including legal fees for the accused, be covered by the prosecution.
- f) **"Section 350":** In a criminal court, under state government rules, a criminal court may order the government to pay reasonable expenses for a complainant or witness attending an inquiry, trial, or proceeding.
- g) **"Section 179":** Police officers investigating cases may require any person inside or near the station with information that appears to have relevant information to be present for investigation. However, women under 15 years of age or above the age of 65 years are not allowed to attend outside their homes. The state government can set rules to reimburse reasonable costs for those attending outside their residence. Several provisions have been adopted to protect witnesses, particularly those who are vulnerable to intimidation. "Section 180" permits the police to summon witnesses without harassment. "Section 181" guarantees the examination of witnesses without coercion. "Section 184" provides that testimony must be recorded before a judge to prevent external pressure. "Section 185" allows police to summon or examine any person necessary to a case, even if he has not been summoned initially. These provisions are intended to protect witnesses and ensure the integrity of their testimony in the judicial process.

2.3 "The Bhartiya Sakshya Adhiniyam, 2023":

- a) **"Section 2":** This section explains witness and documentary evidence, and the court has accepted the evidence even without any witness's testimony, which is in abundance, so that its belief should not be shaken by any practical circumstances, contrary to which the record has been shown.
- b) **"Section 139":** This section recognizes the maxim "evidence has to be weighed and not counted" and states that evidence does not require any specific quantity to establish a fact.
- c) **"Section 137":** If a witness is bound to answer, the witness provided by this section shall not be subject to arrest or prosecution or shall be called upon to give evidence in any criminal proceeding. Nothing will prevail against him. There is one case named "Fisher V. Ronald."⁶ In this case, the court dealt with the privilege afforded to a witness.
- d) **"Section 151":** This Section gives the court the right to decide whether any customary question asked by the witness is fair or unfair depending on the relevance of the case or the proceedings.
- e) **"Section 143":** This Section provides that when a particular witness is to be examined, his method implicitly gives the party the right to conduct chief in examination, cross-examination, or re-examination.

2.4 "Juvenile (Care and Protection of Children) Act, 2000":

"Section 21" states the names of juveniles who violate the law, the provisions against publishing such information, and the names of those who can be identified. Protecting the privacy of minors is of utmost importance. Therefore, written permission is required to disclose identity only if the exact reasons for recording apply. Additionally, it strictly prohibits any public display of juvenile pictures.

⁵ AIR 2003 SC 2053.

⁶ 138 E.R. 1104.

2.5 “The Unlawful Activities (Prevention) Amendment Act, 2004”:

“Section 44”: This Section states about the protection of witnesses, and the same line is also given in “Section 30 of the POTa Act.”⁷. This act includes terrorist acts in unlawful activities.

2.6 “POSCO Act, 2012”:

“Section 35”: This Section provides for the protection of witnesses to children. Testimonies are recorded in a children-friendly environment, often through video conferences. The child’s identity is kept confidential, and a liable person may be present during the testimony. These measures reduce trauma and help children to testify without fear.

“Section 37”: This Section states that the media, including newspapers and television, cannot disclose details of the identification of victims and witnesses of children’s crimes. This protects the identity of the child and prevents further trauma.

2.7 “POTA Act, 2002”:

“Section 30”: This section states that when the special court feels that the life of the witness is in jeopardy, it provides anonymity to the witnesses in that case, and this section protects those witnesses. This section’s validity is upheld in the case of “PUCL V. Union of India.”⁸.

2.8 “Witness Protection Scheme, 2018”:

“The Central Government” had drafted the “Witness Protection Scheme”. The primary objective of this scheme is to ensure that the prosecution, investigation, and trial proceedings remain unaffected by any possible intimidation or fear experienced by the witnesses, which may hinder their willingness to provide evidence. The scheme seeks to create a safe environment for witnesses to come forward and testify without any fear of retribution, thereby enabling the smooth functioning of the justice system. The Hon’ble Supreme Court approved this scheme on 6th December 2018 in the “Mahendra Chawla V. Union of India.”⁹ Case. According to “Section 398 of BNSS”¹⁰, to protect witnesses, all state governments will prepare and notify a “Witness Protection Scheme” for the state.

This scheme has divided the witnesses into three categories, and those three categories are:

1. The witnesses or their family members receive threats that extend to their lives.
2. Threat extends to the reputation and property of witnesses.
3. Threat is moderate and extends to harassment or intimidation.

Need of this Scheme: The need for witness protection is envisaged by the various law commission reports and the “Malimath Committee”. Witness protection issues “172nd and 178th reports” emphasized the safety of witnesses. In the “Sakshi V. Union of India”¹¹ Case, the “172nd report” emphasizes that the witness must avoid the accused in Camera trials and ensure that her testimony is procured without public fear.

Further, the “198th report” emphasizes that this scheme needs to be extended to all serious offences and increase the applicability and functioning powers because this scheme is only limited to sexual offences and terrorism cases. Witness protection is emphasized in the case of “Zahir Habibullah H. Sheikh and Anr. V. State of Gujarat”¹², where the Supreme Court defines a fair trial and states that if someone has forced or threatened witnesses for giving false evidence, then it would not come under fair trial, and in the case of “State of Gujarat V. Anirudh Singh.”¹³, SC says the witness has to give evidence to assist the state if he knows the commission of the crime.

⁷ The Prevention of Terrorism Act, 2002 (Act 15 of 2002).

⁸ AIR 1997 SC 568.

⁹ 2019 (14) SCC 615.

¹⁰ The Bharatiya Nagarik Suraksha Adhiniyam, 2023.

¹¹ AIR 2004 SC 3566.

¹² (2004 (5) SCC 353).

¹³ (1997) 6 SCC 524.

This Scheme gives nine protective measures, and these are as follows:

1. During the trial and investigations, it is to ensure that the accused and witnesses are not put up together.
2. To provide unlisted numbers to witnesses by contacting the telephone company.
3. Suppress the original identity of the witness and also change the identity of them.
4. The residence of the witness can be changed to somewhere else.
5. On the hearing date, provide a government vehicle to the witness so he or she can reach the court safely.
6. To provide security to the witness, like body protection, fencing, security doors for their home, CCTV, or regular patrol.
7. When a witness gives his statement, it is to ensure that there is an additional person present.
8. There must be an in-camera trial held.
9. The court has also provided options to hide the face or use a voice change mechanism through software and offers the witness financial aid.

Rights of Witness:

- a. Witnesses have the right to a safe waiting place during court proceedings.
- b. The witness has the right to know the status of the crime investigation and prosecution of the crime.
- c. The privacy of witnesses should be treated and respected and respected with compassion and dignity.
- d. They should be protected from harm and intimidation.
- e. The witness can give evidence without revealing his identity.
- f. They have the right to be provided a safe place and transportation.

Protection Measures Types: “The Victim Protection Scheme, 2018” mandates proportionate protective measures for witnesses based on the threat level faced during a given period. The following list is not exhaustive and may include, but is not limited to, the following:

- To guarantee a fair and impartial trial or investigation, it is imperative that the accused and the witness are kept at a safe distance from each other. The precautionary measure ensures that the witness's testimony is not influenced by the accused's presence and that the accused's rights are protected during the proceedings. Therefore, maintaining a strict separation between the two parties is of utmost importance.

Drawbacks of the Scheme: It is believed that this witness protection scheme provides adequate protection to the witnesses even after the completion of the examination or during the continuation of the trial in minor cases. Still, it also has some shortcomings, and these are:

- a. It is the responsibility of the state to have a functioning criminal justice system, but some states do not have enough resources to implement this scheme. The Center should assist in this alternative, but it does not consider itself entitled to give even a single penny in this scheme for the witness protection fund.
- b. The witness protection functioning order is only limited to three months.
- c. One of the most significant drawbacks is that the head of the police decides to maintain or prepare a threat analysis report or provide information about witnesses who have connections to politicians or influential people who can pressure police officers in high-profile cases.

Right to a Fair Trial: A crucial aspect of India's democratic system, “Article 21 of the Indian Constitution” guarantees the right to a fair trial. Witnesses deserve a fair trial as they can alter a case's outcome. In “Zahira Habibullah Sheikh & Anr. V. State of Gujarat & Ors. (2006)”¹⁴, the SC ruled that a witness cannot be coerced or threatened to give false evidence. The accused may only receive a fair trial if the principle is followed. The accused should cross-examine any number of witnesses during the proceeding. In “Mohd. Hussain Julfikar Ali V. State of Gov. of NCT Delhi 2012”¹⁵, only one witness out of fifty-six was cross-examined, leading to the appellant's acquittal.

¹⁴ (2004 (5) SCC 353).

¹⁵ AIR 2012 SC 3860.

4. SIGNIFICANCE OF WITNESS PROTECTION:

- 1) **Witness corporation Encouragement:** Providing evidence and testifying witnesses are important in criminal cases. Building a solid case against the accused in criminal cases can be quite challenging without the cooperation of witnesses. For witness safety, where witnesses feel safe to come forward and testify without fear of retaliation, the witness protection program helps to create a safer environment.
- 2) **Retaliation and Intimidation Prevention:** To prevent witnesses from testifying truthfully, witnesses may be intimidated, tortured, or even subjected to violence. To ensure that witnesses do not fear speaking the truth, there can be witness protection measures such as giving them a new identity card, transferring and providing physical security, or helping to deter potential threats.
- 3) **Trial integrity preserving:** Witness protection is essential to maintain the integrity of the judicial process. The court's ability to make well-informed and just decisions can be compromised if witnesses are too afraid to testify. The trial must be conducted with fairness and accuracy to protect witnesses.
- 4) **Criminal networks dismantle:** Witnesses may have vital information to dismantle cases involving organized crimes or more extensive criminal networks. Witness protection programs can facilitate the cooperation of these witnesses, which can lead to the dismantling of criminal enterprise and the apprehension of key individuals.
- 5) **Public trust enhancement:** Enhances public trust in the criminal justice system whenever witnesses feel protected and secure. Suppose witnesses think that the system is committed to protecting them. In that case, citizens will be more likely to cooperate with law enforcement or come forward as witnesses, and this trust is crucial for the functioning of a fair and effective justice system.
- 6) **Vulnerable witnesses addressed:** Some witnesses may face increased risks as victims of domestic violence, human trafficking, or vulnerable individuals. In these cases, witness protection is critical to ensure the safety or well-being of those permitted to participate in the judicial process.
- 7) **Investigation supporters:** Witnesses often provide critical information during the investigation. Law enforcement agencies can conduct thorough and effective investigations that lead to the arrest of suspects and evidence collection while protecting the safety of witnesses.

5. CHALLENGES FACED BY WITNESSES:

- 1) **Threat and intimidation:** In the cases of influential individuals or criminal organizations, witnesses are frequently subjected to threat and intimidation. Witnesses may be prevented from giving truthful testimony due to fear of personal harm or consequences to themselves or their families.
- 2) **Retaliation and harassment of witnesses:** During and after the legal proceedings, witnesses may experience retaliation and harassment. Loss of employment or damage to their reputation may occur because of this social ostracization. To ensure their safety, witnesses may sometimes be forced to relocate.
- 3) **Absence of witness protection:** Witnesses are considered vulnerable to harm, with existing witness protection programs often criticized for being inadequate and inconsistent. This contributes to witnesses' reluctance to cooperate without a robust and standardized protection system.
- 4) **Lengthy legal proceedings:** In India, the slow pace of legal proceedings can discourage witnesses. There may be a need for more trust in the justice system because of the increased possibility of witnesses being influenced or coerced by lengthy trials.
- 5) **Collusion and corruption:** Witness confidence undermined through the instances of corruption within the legal and law enforcement systems. Witnesses may be victims of collusion between the accused and the authorities and may also fear that they will not be treated fairly.

5. Trailblazing Verdicts:

- 1) **"Nirmal Prem kumar V. State Rep. By Inspector of Police, 2024"**¹⁶

This case focuses on the protection of victims of children by the "POSCO Act, 2012". The Supreme Court highlighted the importance of protecting witnesses, particularly minors, to maintain their safety and the credibility of their statements.

¹⁶ (2024 SC 221).

2) **“Himanshu Singh Sabharwal V. State of Madhya Pradesh and Ors. 2008”¹⁷**

Explaining the importance of the witness in this case, the Supreme Court says that the witness is the eyes and ears of the justice system, and it is also said that if anyone harasses, threatens, or kills a witness, the fundamental rights of the witness are also vindicated. To uphold the National Motto- “Satyamev Jayate,” the state has to protect the witness because the protection of witnesses is the state's duty.

3) **“Neelam Katra V. Union of India, 2003”¹⁸**

In this case, the Supreme Court said that the edifice of administration is based on the witnesses giving evidence in the court of law without fear or favor. If a witness is threatened or intimidated from testifying, then the foundation of the court will be weakened and destroyed. “The Delhi High Court” made guidelines for the protection of these witnesses in this case but did not touch upon the issue of maintaining confidentiality of the witness's identity in these guidelines.

4) **“Krishna Mochi V. State of Bihar, 2003”¹⁹**

In this case, the Supreme Court observed that the witness plays a vital role in the decision-making process. Both wrongful acquittal and wrongful conviction saddens the people of our society. The witnesses are afraid of testifying against the accused and turn hostile because they fear losing their lives, limbs, relatives, or property.

5) **“Delhi Domestic Working Women's Forum V. Union of India, 1995”²⁰**

In this case, the court has emphasized that for those key witnesses who are involved in the offence of rape trial, the court has to maintain their anonymity to that witness.

6) **“The State of Maharashtra V. Bandhu, 2018”²¹**

This case is related to a rape victim in which one victim was only 14 years old, and she was deaf-dumb, this girl was allegedly raped by the respondent named Bandhu. Because the victim was not cross-examined, the High Court set aside the defendant's conviction. After this, the case was transferred to the apex court, where they found that the victim had been raped, and there was so much evidence to prove it that it would not have made any difference if the victim had not been cross-examined. While passing the order, the apex court suggested that a particular examination center should be set up to examine weak witnesses to make it easier for witnesses to testify.

7) **“Swaran Singh V. The State of Punjab, 1957”²²**

In this case, the court said the evidence is admissible in criminal cases under law. So, the witnesses who provide that evidence are essential. It is rare to see a witness changing his stand of his own free will at the time of trial.

8) **“Seema Alias Veeranam V. State of Inspector of Police, 2005”²³**

In this case, the court says that the court can't deny testimony based on the witness being a related person because the court must scrutinize the evidence and carefully examine all the evidence.

9) **“The State of Madhya Pradesh V. Chagga, 1998”²⁴**

In this case, the court said that according to “Section 135 of the Evidence Act 1872”, no particular number is required in witnesses for proofing the case fact. The court is concerned with the quality of the case, not the quantity. If the court is concerned with the quality of the cases, it is not the quantity. If the court agrees with the single witness testimony, contending that it would be considered immaterial.

10) **“Asharam Bapu Case, 2017”²⁵**

This case is related to the Asharam Bapu, who resided in his ashram as a devotee of God people think that he is the messenger of divine powers on earth, but he was accused of several rape cases where he asked for sexual favours from those women who visited his ashram for prayers. The witness of rape, in this case, was the same all

¹⁷ AIR 2008 SC 1943.

¹⁸ ILR (2003) II Del 377.

¹⁹ AIR 2003 SC 886.

²⁰ 1995 (1) SCC 14.

²¹ (2018) 11 SCC 163.

²² 1957 AIR 637.

²³ 2005 ALL MR (Cri) 2287 (S.C).

²⁴ 1998 CRILJ 2179.

²⁵ 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 \(hrw.org\)](https://www.hrw.org/news/2019/04/04/asaram-case-highlights-need-for-witness-and-victim-protection-in-india) (Last Visited on Mar. 29, 2024).

those women who used to come to him for prayer. All those women were threatened by his men and their followers, and the investigation officers were also getting threatening messages and calls to stop the investigation.

11) “Lakhan V. Emperor, 1929”²⁶

In this case, the court has ruled that if a person remains silent or cannot speak about his religious practice, he can give his statement in writing, or that statement will be presented as evidence in the court.

12) “Mahendra Chawla V. Union of India, 2019”²⁷

“The Supreme Court has recently approved the Draft Witness Protection Scheme. The Scheme was created with inputs from 18 states and Union Territories and suggestions from police personnel, judges, and civil society members”. The National Legal Services Authority ultimately finalised it after being reviewed from various open sources.

13) “Zahira Habibullah H. Sheikh and Anr. V. State of Gujrat and Ors., 2004”²⁸

In this case, the SC Bench, consisting of Hon’ble Justice Raju Dora swamy and Justice Arijit Pasayat, stated that forcing a witness to give false evidence or threatening them would result in an unfair trial. People must understand that the judiciary has limited power to grant absolute protection to witnesses.

14) “State of Gujarat V. Anirudh Singh and Anr., 1997.”²⁹

In this case, the Court said it is the duty of every witness who knows about a crime to assist the state by providing evidence. However, many witnesses turn hostile for various reasons, such as deterioration in the law-and-order situations and the principle of self-preservation. In some cases, even eyewitnesses are being assassinated before they can testify in court.

15) “Manu Sharma V. State (NCT of Delhi), 2010”³⁰

In this case, SC flaws in the criminal justice system have been highlighted, such as the police failing to record statements and witnesses retracting their statements due to intimidation, threats, or bribes. However, despite these issues, the court can’t ignore them. When a witness turns hostile, the court takes necessary steps to ensure that the truth is revealed.

16) “Naresh Shridhar Mirjankar and Ors. V. State of Maharashtra and Anr., 1966”³¹

The High Court allowed the protection of publication of evidence of the witness, which was later re-affirmed by the SC. This was done to ensure that the witness’s business interest would be maintained.

17) “Sakshi V. Union of India, 2004”³²

The 172nd report highlights the need to protect witnesses from public fear during trials. It proposes holding in-camera trials, as recommended by the judgement in this case, which would keep the witness away from the accused and ensure their testimony is procured without any fear. This approach would not only safeguard the witness but also help to ensure that justice is served.

18) “Neelam Katra V. Union of India, 2003”³³

The guidelines for witness protection have been laid down; however, an important issue remains silent: the confidentiality of the witness’s identity. It is to ensure the safety of a witness, not only during the trial but also after it. Their identity must be kept confidential to prevent any potential harm or retaliation. Therefore, it is crucial to establish clear rules and regulations to maintain the anonymity of the witnesses and guarantee their protection.

19) “NHRC V. State of Gujarat, 2009”³⁴

The importance of safeguarding the identity of witnesses cannot be overstated. This pressing concern necessitates the establishment of a witness protection program.

²⁶ AIR 1929 PATNA 231.

²⁷ 2019 (14) SCC 615.

²⁸ (2004) 4 SCC 158.

²⁹ (1997) 6 SCC 514.

³⁰ (2010) 6 SCC 1.

³¹ 1 1966 SCR (3) 744.

³² AIR 2004 SC 3566.

³³ ILR (2003) II Del 377.

³⁴ (2009) 6 SCC 767.

6. INDIA VIS A VIS OTHER JURISDICTION

1) “United States of America”

If we look into it, the witness protection program created in the United States is the most comprehensive globally known in the form of the “United States Federal Bureau Agency” to provide new identification for witness protection. Then, after that, the “Witness Protection Act” was established under the “Organized Crime Control Act of 1970”. Several federal states operate their witness protection programs, including “New York, Washington, Connecticut, Texas, United States”. While the program is not as broad as its central counterpart, it focuses on crimes not covered by central law.

In addition to seriously considering these threats, law enforcement agencies extensively assess the danger and threat involved. These agencies ensure that witnesses are successful in testifying in court without any danger when they find the threat severe enough. They also use particular funds to provide protection or assistance to witnesses. These funds assist witnesses and their families with relocation, residential health care, vocational training, etc.

2) Australia

In the sphere of witness protection, Australia is credited with creating a model law, “The Witness Protection Act of 1994”, which forms the basis of various regional witness protection programs in the continents.

3) China

“The Witness Protection Ordinance 2000” has been implemented in China to assist witnesses, their families, and those closely associated with them.

4) United Kingdom

There are acts in the United Kingdom that include provisions regarding the intimidation of witnesses or the provision for courts to direct special measures to protect witnesses, namely “The Criminal Justice & Public Order Act, 1994” and “The Youth Justice and Criminal Evidence Act, 1999”, and under “The Coroners and Justice Act, 2009”, a judge can order anonymity for such witnesses. Under the supervision of the “National Crime Agency”, presently, “The United Kingdom Protect Services, 2013”, is responsible for such witness protection and, through the local police personnel, carries out its operations.

5) Germany

For boosting, such programs were claimed in “Germany in the 1980s”, but it was only in 1988 that witness protection laws were formally adopted or included recording of witness testimony or other relevant technologies. To ensure witness protection, with the changing times, legislation has evolved to serve as guidelines.

7. INTERNATIONAL DECLARATION AND TREATIES

Such efforts have been made on the international level to force the states to impose such protection laws on the domestic level for the welfare of their citizens because there is no justification for protecting witnesses regarding one’s protection or fundamental human rights.

To ensure witness safety from any threatening and intimidation from the accused, minimize the inconvenience to victims, their families, and witnesses, and protect their privacy, “The Declaration of the Basic Principles of Justice for Victims of Crime and Abuse of Power was adopted by the United Nations in 1985”. The signatory states, “The United Nations Convention Against Transnational Organized Crimes, 2000”, mandates undertaking the necessary steps to curb any threat to a witness in criminal proceedings like corruption, human trafficking, sexual assault, etc. Retaliatory measures and intimidation.

8. CONCLUSION

Ensuring the safety of witnesses is paramount to upholding the integrity and efficiency of the criminal justice system. The legal area of witness protection is multifaceted and constantly evolving, making it an indispensable tool in pursuing justice. Throughout this exploration, numerous significant themes and challenges have surfaced, emphasizing the remarkable progress made while pinpointing areas requiring improvement. The importance of witness protection can’t be overstated when upholding justice and maintaining the rule of law. Witnesses are the backbone of the criminal justice process, providing critical testimony and evidence that can make all the difference in securing a conviction. Without the

assurance of safety and protection, witnesses may be reluctant to come forward and share what they know, leaving criminals free to continue their unlawful activity. However, victims often face intimidation, harassment, and physical harm, which deters them from cooperating with law enforcement.

“The Code of Criminal Procedure, the Indian Evidence Act, and the Witness Protection Scheme 2018”, which comes under the “Indian legal framework”, provide guidelines and statutes for ensuring the safety and security of witnesses. It means witnesses can feel safe and confident in coming forward to testify and help bring justice to those who have committed crimes. Trust in the legal system is critical for a just society, and witness protection is essential to that trust. In India, legal provisions have been implemented to safeguard the welfare of witnesses involved in criminal cases, covering all stages of the judicial process. These measures ensure that witnesses are protected and secure and can maintain anonymity without fear of retribution. In light of recent case laws in India, it has become increasingly apparent that witness protection measures must be strengthened to ensure the safety of those who testify. The importance of preserving the justice system's integrity can't be overstated, and providing robust protection for witnesses is essential. If we talk about the recent famous cases, in one of the well-known cases, witness intimidation and threats were significant obstacles in **“the Nirbhaya Case”**³⁵. The safety and protection of witnesses is paramount in ensuring justice is served. The recent intervention of the Supreme Court, ordering witness protection measures, serves as a powerful reminder of this fact. It is crucial to understand that witnesses involved in cases related to organized crime, terrorism, and corruption are often at grave risk. Therefore, it is imperative to take immediate and effective measures to provide them with adequate protection. The case of **“The State of Gujarat V. Adambhai Ajmeri Suleman Bhai and Ors.”**³⁶ is a clear example of the obstacles to protecting witnesses. It is a stark reminder to take witness protection measures seriously. The quest for justice hinges on reliable eyewitness accounts. Unfortunately, in this case, the lack of adequate protection compromised the credibility of key witnesses. Intimidation and coercion were allowed to take root, leading to a miscarriage of justice. This case highlights the critical need to bolster witness protection mechanisms to thwart any attempts of witness tampering and uphold the sanctity of legal proceedings. In 2019, the SC ruling highlighted the constitutional imperative of ensuring witness protection, affirming it as a fundamental right under “Article 21 of the Indian Constitution”. Witness protection is necessary to protect the lives and liberty of individuals who have bravely come forward to provide crucial evidence in legal proceedings. This ruling clearly indicates how vital witness protection measures are for maintaining the integrity of legal proceedings and ensuring justice is served. By upholding the rule of law and fostering a fair trial system, these measures play an indispensable role in preserving the fundamental values of our society.

By drawing on the valuable insights from international perspectives on witness protection, India can formulate a more practical approach to crucial issues. It is essential to consider other countries' experiences and best practices to ensure the safety and security of witnesses in India. With this knowledge, India can develop a robust and reliable witness protection system to strengthen the rule of law and inspire greater public confidence in the justice system. The Safety and protection of witnesses is of utmost importance, and several countries have recognized this by implementing comprehensive witness protection programs. Nations such as the United States, Canada, and various European countries supported witnesses, including relocation, financial assistance, and psychological counselling. These programs ensure that witnesses can testify without fear of retribution and help maintain the justice system's integrity. India can enhance its witness protection framework by adopting international best practices. By drawing on the experiences of other countries, India can create a more robust and comprehensive system tailored to its unique socio-cultural context. This will not only protect witnesses but also strengthen the overall justice system. In today's world, where crime has taken on a global dimension, international cooperation is more critical than ever. This is especially true for transactional crimes where witnesses may require protection beyond national borders. Mutual legal assistance treaties and agreements play an indispensable role in facilitating the exchange of information and coordination between nations to ensure the safety of witnesses and the successful prosecution of offenders. By working together, countries can provide a protective shield for witnesses and hold criminals accountable for their actions.

³⁵ Mukesh V. State (NCT of Delhi), (2017) 6 SCC 1.

³⁶ Writ Petition (Cr. No. 25/2015).

The practical implementation of witness protection in India is a crucial issue that requires the combined efforts of the government, judiciary, law enforcement agencies, and civil society. To overcome the existing challenges and ensure the safety of witnesses, people need to work together towards a secure and just society. India's criminal justice system can be significantly strengthened by prioritizing witness protection. Providing a safe environment for witnesses to come forward and testify without fear of reprisal is crucial in upholding the rule of law. By doing so, India can ensure that perpetrators are held accountable for their actions and that justice is served.

9. SUGGESTIONS

1. It is necessary to strengthen laws and protocols to ensure the confidentiality of witness identities and prevent any leaks or breaches that could endanger their safety.
2. Offering extensive support to witnesses and their families during relocation is paramount. Financial assistance for housing, transportation, and necessities can ensure they feel safe and secure during this difficult time. A comprehensive relocation assistance program is designed to ease their burden and help them confidently start a new one.
3. Protecting witnesses is crucial for ensuring justice is served. To prevent possible retaliation or intimidation, offering them the option of legally changing their identities is highly recommended. This will provide them with an added layer of security and peace of mind, allowing them to cooperate with the legal process without fear of consequences fully.
4. It is crucial to ensure the safety of witnesses who come forward to share their account of an incident. To achieve this, law enforcement agencies or specialized protection units must continuously monitor their safety to respond promptly to potential threats or risks. Only through such measures can the government guarantee that witnesses who speak up are protected and can provide their testimony without fear of harm.
5. Protecting witness information is crucial to ensuring the criminal justice system's integrity. To achieve this, only authorized personnel must access such sensitive information. These measures will minimize the risk of leaks and prevent any attempts at witness intimidation.
6. It is crucial that witnesses are given the necessary legal counsel and support throughout the witness protection process. This includes guidance on their legal rights and procedures. By providing witnesses with the support they need, the government has to ensure that they can participate in the legal safely and effectively.
7. It is crucial to offer adequate psychological counselling and support services to witnesses and their families who have been through the traumatic experience of witnessing a crime. These services help them cope with the stress and emotional distress associated with the legal process. Witnessing a crime can be a daunting experience that can leave long-lasting effects on an individual's mental and emotional well-being. Therefore, it is vital to provide professional and compassionate support to help them navigate through this difficult time. The counselling and support services can help witnesses and their families process their feelings and emotions, manage stress and anxiety, and develop effective coping mechanisms. This can lead to a better recovery and improve their overall quality of life.
8. Establishing a detailed and all-encompassing emergency response plan is crucial to effectively tackle any immediate threats or security breaches directed towards protected witnesses. Such a plan should be designed to cover a wide range of scenarios and contingencies and should be regularly updated to ensure its continued relevance and effectiveness.
9. It is paramount to raise awareness among law enforcement personnel, judicial authorities, and the public about the significance of witness protection. It is equally important to educate them about the devastating consequences of intimidating or harming witnesses. By doing so, the court can ensure that witnesses feel safe and secure while reporting crimes, and justice can be served without any hindrances.
10. It is highly recommended that comprehensive training programs be offered to them. These programs should educate witnesses about their legal rights, safety measures, and the proper procedures for cooperating with law enforcement while under protection.
11. To protect the confidentiality of sensitive information within the witness protection program, all involved individuals, such as law enforcement officers, government officials, and support staff, must sign non-

- disclosure agreements. This will ensure that all parties understand the gravity of the situation and are committed to keeping the information confidential.
12. Collaborating with non-governmental organizations and civil society groups with expertise in human rights and victim protection is crucial for improving the effectiveness of witness protection measures. These organizations can provide valuable insights and resources to ensure that witnesses are adequately protected and supported throughout the legal process.
 13. Witnesses who participate in criminal proceedings often face significant challenges in their personal and professional lives. To support these individuals, financial assistance may be provided to cover expenses such as healthcare, education, and vocational training. This aid can be critical in helping witnesses rebuild their lives and regain a sense of stability after their involvement in the justice system.
 14. It is recommended that appropriate measures be implemented to restrict public access to court proceedings involving witnesses under protection to safeguard them from any potential harm, exposure, or intimidation that may arise due to their participation in the legal process. Such measures may include limiting the number of people allowed in the courtroom, establishing a screening process for attendees, or utilizing technology to enable remote access to proceedings.
 15. To provide better protection to witnesses, it is crucial to implement modern technology solutions. Encrypted communication channels can help to keep conversations between witnesses and law enforcement private and secure. Surveillance systems can monitor the witness's surroundings and detect any suspicious activity, which can be immediately reported to the authorities. Facial recognition software can identify potential threats and help prevent unauthorized access to the witness's location.