INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed



www.ijlra.com

ISSN: 2582-6433

DISCLAIMER

No part of this publication may be reproduced, stored, transmitted, or distributed in any form or by any means, whether electronic, mechanical, photocopying, recording, or otherwise, without prior written permission of the Managing Editor of the *International Journal for Legal Research & Analysis (IJLRA)*.

The views, opinions, interpretations, and conclusions expressed in the articles published in this journal are solely those of the respective authors. They do not necessarily reflect the views of the Editorial Board, Editors, Reviewers, Advisors, or the Publisher of IJLRA.

Although every reasonable effort has been made to ensure the accuracy, authenticity, and proper citation of the content published in this journal, neither the Editorial Board nor IJLRA shall be held liable or responsible, in any manner whatsoever, for any loss, damage, or consequence arising from the use, reliance upon, or interpretation of the information contained in this publication.

The content published herein is intended solely for academic and informational purposes and shall not be construed as legal advice or professional opinion.

Copyright © International Journal for Legal Research & Analysis. All rights reserved.

ISSN: 2582-6433

ABOUT US

The *International Journal for Legal Research & Analysis (IJLRA)* (ISSN: 2582-6433) is a peer-reviewed, academic, online journal published on a monthly basis. The journal aims to provide a comprehensive and interactive platform for the publication of original and high-quality legal research.

IJLRA publishes Short Articles, Long Articles, Research Papers, Case Comments, Book Reviews, Essays, and interdisciplinary studies in the field of law and allied disciplines. The journal seeks to promote critical analysis and informed discourse on contemporary legal, social, and policy issues.

The primary objective of IJLRA is to enhance academic engagement and scholarly dialogue among law students, researchers, academicians, legal professionals, and members of the Bar and Bench. The journal endeavours to establish itself as a credible and widely cited academic publication through the publication of original, well-researched, and analytically sound contributions.

IJLRA welcomes submissions from all branches of law, provided the work is original, unpublished, and submitted in accordance with the prescribed submission guidelines. All manuscripts are subject to a rigorous peer-review process to ensure academic quality, originality, and relevance.

Through its publications, the *International Journal for Legal Research & Analysis* aspires to contribute meaningfully to legal scholarship and the development of law as an instrument of justice and social progress.

ISSN: 2582-6433

PUBLICATION ETHICS, COPYRIGHT & AUTHOR RESPONSIBILITY STATEMENT

The *International Journal for Legal Research and Analysis (IJLRA)* is committed to upholding the highest standards of publication ethics and academic integrity. All manuscripts submitted to the journal must be original, unpublished, and free from plagiarism, data fabrication, falsification, or any form of unethical research or publication practice. Authors are solely responsible for the accuracy, originality, legality, and ethical compliance of their work and must ensure that all sources are properly cited and that necessary permissions for any third-party copyrighted material have been duly obtained prior to submission. Copyright in all published articles vests with IJLRA, unless otherwise expressly stated, and authors grant the journal the irrevocable right to publish, reproduce, distribute, and archive their work in print and electronic formats. The views and opinions expressed in the articles are those of the authors alone and do not reflect the views of the Editors, Editorial Board, Reviewers, or Publisher. IJLRA shall not be liable for any loss, damage, claim, or legal consequence arising from the use, reliance upon, or interpretation of the content published. By submitting a manuscript, the author(s) agree to fully indemnify and hold harmless the journal, its Editor-in-Chief, Editors, Editorial Board, Reviewers, Advisors, Publisher, and Management against any claims, liabilities, or legal proceedings arising out of plagiarism, copyright infringement, defamation, breach of confidentiality, or violation of third-party rights. The journal reserves the absolute right to reject, withdraw, retract, or remove any manuscript or published article in case of ethical or legal violations, without incurring any liability.

ISSN: 2582-6433

WITNESS PROTECTION IN INDIA: FROM JUDICIAL INTERVENTIONS TO INSTITUTIONAL REFORMS

AUTHORED BY - NARAYANEE AKSHAYAVARSHINI N P[1]

ABSTRACT

Witnesses play a vital role in criminal justice, yet threats, intimidation and fear of retaliation often prevent them from testifying freely. In India, witness protection has evolved primarily through judicial intervention, culminating in the Witness Protection Scheme, 2018, approved in Mahender Chawla v. Union of India. Although Section 398 of the Bharatiya Nagarik Suraksha Sanhita, 2023 recognises the need for witness protection schemes, concerns remain regarding uniform implementation, accountability and the absence of comprehensive central legislation. This study aims to evaluate the adequacy of India's witness protection framework and propose reforms that safeguard witnesses while preserving the accused's right to a fair trial and objectives are to examine the constitutional and statutory framework, assess the effectiveness of the 2018 Scheme, analyse judicial intervention, evaluate fair-trial safeguards and identify lessons from the United States, the United Kingdom, France and Russia. The research addresses whether existing laws adequately protect witnesses, whether the 2018 Scheme ensures effective protection, whether protective measures respect fair-trial rights and whether statutory and institutional reforms are necessary. The study adopts a doctrinal, qualitative and comparative methodology using legislation, judicial decisions, official reports and international instruments. The findings reveal that fragmented implementation, uncertain funding and limited institutional independence weaken protection. The study recommends comprehensive legislation, independent protection mechanisms, uniform standards and judicial oversight.

Keywords: Witness protection, BNSS, Fair trial, Judicial intervention, witness intimidation.

[1]CLA2512, 2nd year LLM(Hons), Department of Criminal Law and Criminal Justice Administration, School of Excellence in Law, The Tamil Nadu Dr. Ambedkar Law University, 9360278970, akshayavarshini2211@gmail.com.

ISSN: 2582-6433

CHAPTER-I

INTRODUCTION

1.1 INTRODUCTION

Criminal justice in India depends on the courage of ordinary people to testify. Jeremy Bentham's remark that witnesses are the "eyes and ears of justice" has been adopted by the Supreme Court of India to explain why a trial in which witnesses are silenced is a trial in which justice is blind.[2]

Where forensic and documentary proof is thin, as it is in many prosecutions, oral testimony becomes the case. That testimony is given years after the event, in open court, in front of an accused who may be wealthy, politically connected or violent. Witnesses who are threatened, bribed or attacked turn hostile, retract or stay away, and the prosecution fails for reasons unrelated to guilt.[3]

India's response has been unusual in one respect: the protective framework has been built largely by courts rather than by Parliament. The Delhi High Court issued witness-protection guidelines in Neelam Katara in 2003,[4] the Supreme Court prescribed protective courtroom procedures for child sexual-abuse witnesses in Sakshi in 2004,[5] and in Mahender Chawla in 2018 it approved the Witness Protection Scheme, 2018 ("2018 Scheme") and directed that it operate as law under Articles 141 and 142 until Parliament legislates.[6]

Parliament has acted only in part. Section 398 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ("BNSS"), in force since July 1, 2024, obliges every State to prepare and notify a witness protection scheme, but it supplies no uniform national standard.[7] This is so despite calls for a dedicated statute from the Malimath Committee in 2003[8] and from the Law Commission of India in 2006.[9]

This paper asks whether judicial intervention supplemented by executive schemes is enough, or whether India now needs statutory and institutional reform. It tests the 2018 Scheme against three standards: protection of the witness's safety, identity and participation; balance with the

[2]Zahira Habibulla H. Sheikh v. State of Gujarat, (2004) 4 SCC 158 (India) (quoting Jeremy Bentham, Rationale of Judicial Evidence (1827)).
[3]Swaran Singh v. State of Punjab, (2000) 5 SCC 668 (India).
[4]Neelam Katara v. Union of India, ILR (2003) 2 Del 377 (India).
[5]Sakshi v. Union of India, (2004) 5 SCC 518 (India).
[6]Mahender Chawla v. Union of India, (2019) 14 SCC 615 (India) [hereinafter Mahender Chawla].
[7]Bharatiya Nagarik Suraksha Sanhita, 2023, No. 46 of 2023, § 398 (India) [hereinafter BNSS].
[8]Comm. on Reforms of Crim. Just. Sys., Gov't of India, Report, vol. I (2003) [hereinafter Malimath Committee Report].
[9]Law Comm'n of India, Report No. 198, Witness Identity Protection and Witness Protection Programmes (2006).

ISSN: 2582-6433

accused's right to a fair trial; and consistency with comparative models in the United States, the United Kingdom, France and Russia.

1.2 NEED OF THE STUDY

Four considerations make the study necessary. First, there is a normative gap. The Supreme Court has held that a fair trial must be fair to the accused, the victim and society, yet India has no central statute that guarantees witnesses protection as of right. The 2018 Scheme is, in the Court's own description, an interim measure pending legislation.[10] Second, BNSS section 398 delegates design to the States, so protection now depends on the State in which a witness happens to testify.[11] Third, the cost of inaction is visible in the hostile-witness problem, which the Supreme Court has traced to threat, inducement and fear of the accused.[12] Fourth, protective measures such as anonymity, screens and in-camera hearings touch the accused's rights, and the balance between the two sets of interests has not been examined systematically in Indian scholarship.

1.3 SIGNIFICANCE OF THE STUDY

The study is significant at three levels. Academically, it connects the case law, the 2018 Scheme and the BNSS in one analysis and tests them against comparative models rather than describing them in isolation. For policy, it identifies design choices, such as who decides on protection, who funds it and when it begins, that a future statute must settle. For the courts, it offers a proportionality framework for deciding when protection may limit confrontation and open justice, so that trial judges are not left to improvise case by case.

1.4 REVIEW OF LITERATURE

Writing on witness protection in India is found mainly in Law Commission reports, committee reports and judgments rather than monographs. The table summarises the issues and challenges each source identifies and what it finds.

[10]Zahira, supra note 1; Mahender Chawla, supra note 5.
[11]BNSS § 398, supra note 6.
[12]Ramesh v. State of Haryana, (2017) 1 SCC 529 (India).

ISSN: 2582-6433

Source	Issues and challenges identified	Findings and recommendations
Law Commission Reports 14 (1958), 154 (1996) and 172 (2000)[13], [14], [15]	Witnesses suffer delay, repeated adjournments and poor facilities; rape victims face hostile cross-examination	Better treatment of witnesses; protective courtroom procedure in rape trials; no integrated protection programme
Malimath Committee (2003) and Law Commission Report 198 (2006)[16]	Intimidation is a principal reason witnesses turn hostile; no statutory identity protection	A witness protection statute; a draft Bill providing identity-protection orders and protection programmes under judicial oversight
Judicial writing: Swaran Singh, Zahira, Neelam Katara, Sakshi, Ramesh[17]	Hostile witnesses, state inaction, intimidation of victims and eyewitnesses	Witness protection is part of a fair trial; courts may issue interim guidelines where Parliament is silent
Mahender Chawla and the 2018 Scheme[18]	Reliance on police and district officers; funding; no statute	A binding national scheme with threat categories, a Competent Authority and a Witness Protection Fund, valid until legislation
International materials: UNODC, Council of Europe, Doorson, Davis, Dennis,[19], [20]	Conflict between anonymity and the right to confront accusers	Anonymity is acceptable only where necessary with counter balancing safeguards;conviction should not rest solely/ decisively on anonymous testimony.

[13]Law Comm'n of India, Report No. 14, Reform of Judicial Administration (1958).
[14]Law Comm'n of India, Report No. 154, The Code of Criminal Procedure, 1973 (1996).
[15]Law Comm'n of India, Report No. 172, Review of Rape Laws (2000).
[16]Malimath Committee Report, supra note 7; Law Comm'n of India, Report No. 198, supra note 8.
[17]Swaran Singh, supra note 2; Zahira, supra note 1; Neelam Katara, supra note 3; Sakshi, supra note 4; Ramesh, supra note 11.
[18]Mahender Chawla, supra note 5.
[19]U.N. Off. on Drugs & Crime, Good Practices for the Protection of Witnesses in Criminal Proceedings Involving Organized Crime (2008).
[20] Doorson v. Netherlands, App. No. 20524/92, 22 Eur. H.R. Rep. 330 (1996).

ISSN: 2582-6433

1.5 RESEARCH GAP

The gap is analytical rather than descriptive. Existing sources establish that protection is needed and describe the 2018 Scheme, but they do not assess whether its institutional design (a Competent Authority made up of the district judge, police and prosecution), its funding and its timing can deliver protection in practice, or how it sits with the accused's fair-trial guarantees after the BNSS. This paper addresses that gap.

1.6 RESEARCH PROBLEM

India's witness-protection regime rests on a judge-made scheme and on State schemes whose content Parliament has left open. The problem is whether this arrangement protects witnesses effectively and comprehensively while preserving the accused's right to a fair trial, and, if it does not, what statutory and institutional design would.

1.7 RESEARCH QUESTIONS

1. Whether the existing constitutional and statutory framework adequately protects witnesses from threats, intimidation and retaliation in India?
2. Whether the Witness Protection Scheme, 2018 provides an effective and comprehensive mechanism for protecting the safety, identity and participation of witnesses in criminal proceedings?
3. Whether the implementation of witness protection measures adequately balances witness safety and the accused's right to a fair trial?
4. Whether India's witness protection framework requires statutory and institutional reforms in light of comparative models in the United States, the United Kingdom, France and Russia?

1.8 HYPOTHESIS

Null hypothesis (H0): The existing constitutional, statutory and scheme-based framework adequately and effectively protects witnesses and balances their safety with the accused's right to a fair trial.

Alternate hypothesis (H1): The existing framework is fragmented, dependent on executive discretion and insufficiently safeguarded against both under-protection of witnesses and over-restriction of the accused's rights; a statutory, institutionally independent regime with defined fair-trial safeguards is therefore required.

ISSN: 2582-6433

1.9 AIM AND OBJECTIVES

The aim is to evaluate the adequacy of India's witness protection framework and to propose a reform model grounded in constitutional principle and comparative experience. The objectives are:

1. To examine the international standards and national constitutional and statutory provisions on witness protection.
2. To analyse the structure, strengths and weaknesses of the 2018 Scheme.
3. To study the role of the judiciary in developing protective measures.
4. To assess how protective measures can be reconciled with the accused's fair-trial rights.
5. To draw lessons from the United States, the United Kingdom, France and Russia and to recommend reforms.

1.10 RESEARCH METHODOLOGY

The study is doctrinal and qualitative. It uses analytical, comparative and critical methods. Primary sources are treaties, constitutional and statutory texts, the 2018 Scheme, judgments and official reports. Secondary sources are treatises, articles and reports of international bodies. The comparative chapter examines each system's legal basis, institutions, identity-protection rules and fair-trial safeguards. No fieldwork was undertaken. Citations follow the Bluebook (21st ed.).[21]

1.11 SCOPE

The paper covers witness protection in criminal proceedings in India, from investigation to post-trial, under the Constitution, the BNSS, the Bharatiya Nyaya Sanhita, 2023 ("BNS"), special statutes and the 2018 Scheme, with comparison confined to the four named jurisdictions. It does not cover civil proceedings, and it treats whistle-blower protection only where it overlaps.

1.12 LIMITATIONS

The study is doctrinal and does not use primary empirical data on how schemes operate in practice. State schemes notified under BNSS section 398 vary and are still developing, so the paper analyses the 2018 Scheme as the baseline. Laws stated, reflect sources available up to mid-2026, and foreign law is read from English-language and official texts.

[21]The Bluebook: A Uniform System of Citation (Columbia L. Rev. Ass'n et al. eds., 21st ed. 2020).

ISSN: 2582-6433

1.13 CHAPTERIZATION

This paper is organised into six chapters, as follows:

1. CHAPTER I- Introduction: sets out the introduction, research design and methodology.
2. CHAPTER II- International and National Framework: examines the international and national framework.
3. CHAPTER III- Comparative study: the United States, the United Kingdom, France and Russia.
4. CHAPTER IV- Role of judiciary: analyses the role of the judiciary.
5. CHAPTER V- Implementation, proportionality and the fair-trial balance: tests implementation of the 2018 Scheme and the balance between witness protection and the accused's fair-trial rights.
6. CHAPTER VI- Conclusion: presents findings, suggestions and conclusion.

CHAPTER-II

INTERNATIONAL AND NATIONAL FRAMEWORK

2.1 INTERNATIONAL FRAMEWORK

No single treaty is devoted to witness protection, but several instruments create obligations and set a common standard. The International Covenant on Civil and Political Rights protects life and security of persons and also guarantees the accused the right to examine the witnesses against him, so protection and confrontation are placed in the same instrument from the outset.[22]

The United Nations Convention against Transnational Organized Crime requires States to protect witnesses from retaliation or intimidation through physical protection, relocation, non-disclosure of identity and testimony by video link, but only "without prejudice to the rights of the defendant, including the right to due process."[23] The United Nations Convention against Corruption contains a similar obligation.[24] India is a party to the Covenant and to both Conventions. The 1985 UN Declaration on victims of crime likewise asks States to protect victims and witnesses from intimidation and retaliation.[25] Article 68 of the Rome Statute shows the same pattern in international criminal justice: the court may order protective measures, but

[22]International Covenant on Civil and Political Rights arts. 6, 9, 14(3)(e), Dec. 16, 1966, 999 U.N.T.S. 171.
[23]United Nations Convention against Transnational Organized Crime art. 24, Nov. 15, 2000, 2225 U.N.T.S. 209.
[24]United Nations Convention against Corruption art. 32, Oct. 31, 2003, 2349 U.N.T.S. 41.
[25]Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, G.A. Res. 40/34, ¶ 6(d) (Nov. 29, 1985).

ISSN: 2582-6433

not in a way that is prejudicial to a fair and impartial trial.[26]

The European system supplies the most developed jurisprudence. Article 6(3)(d) of the European Convention on Human Rights guarantees the accused the right to examine witnesses against him.[27] The European Court of Human Rights has accepted that the life and security of witnesses can justify restrictions, provided that the handicaps imposed on the defence are sufficiently counterbalanced and that a conviction does not rest solely or decisively on untested anonymous evidence. The Council of Europe's 2005 Recommendation applies the same logic to national programmes.[28]

Three principles follow. States owe witnesses a positive duty of protection. The available tools range from physical protection and relocation to anonymity and modified testimony. And the core of the defence's right to challenge the evidence against it must survive any protective measure. These principles supply the yardstick for the Indian framework.

2.2 CONSTITUTIONAL FRAMEWORK

The Constitution of India has no express provision on witnesses. Protection is derived from Article 21, which guarantees life and personal liberty and requires that any procedure affecting them be fair, just and reasonable. The Supreme Court has read the fair-trial guarantee as owed not only to the accused but also to the victim and to society, and has treated the integrity of testimony as part of that guarantee.[29]

Witnesses themselves hold the Article 21 right to life and security, and the State's duty to protect them follows from it. Article 14 requires that protection be granted on reasoned, non-arbitrary grounds. Where identity is concealed, the right to privacy recognised in Puttaswamy is also engaged.[30] The constitutional basis for the 2018 Scheme itself, Articles 141 and 142, is considered in section 2.4.

The federal structure matters. Police and public order are State subjects, while criminal law and criminal procedure are on the Concurrent List.[31] Parliament may therefore enact a national witness-protection statute, but delivery depends on State police, State prosecution services and State finances. This explains both the shape of BNSS section 398, which asks each State to

[26]Rome Statute of the International Criminal Court art. 68, July 17, 1998, 2187 U.N.T.S. 3.

[27]Convention for the Protection of Human Rights and Fundamental Freedoms art. 6(3)(d), Nov. 4, 1950, 213 U.N.T.S. 221.

[28]Doorson, supra note 20; Al-Khawaja & Tahery v. United Kingdom, App. Nos. 26766/05 & 22228/06, 54 Eur. H.R. Rep. 23 (2011) (Grand Chamber); Council of Eur., Recommendation Rec(2005)9, supra note 19.

[29]Maneka Gandhi v. Union of India, (1978) 1 SCC 248 (India); Zahira, supra note 1.

[30]K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1 (India).

[31]India Const. sched. VII, List II, entries 1–2; *id.* List III, entries 1–2.

ISSN: 2582-6433

notify its own scheme, and the implementation problems discussed in Chapter 5.

2.3 STATUTORY FRAMEWORK

2.3.1 General criminal law

The general statutes contain scattered provisions, summarised below.

Provision	Subject	Earlier provision
BNSS § 398	Each State to prepare and notify a Witness Protection Scheme	None (new)
BNSS § 366	In-camera inquiry or trial for rape and allied offences	Cr.P.C. § 327
BNSS § 193	Police report; discretion to withhold parts of statements from the accused's copy	Cr.P.C. § 173
BNSS § 348	Power to summon or recall a material witness	Cr.P.C. § 311
BNSS § 530	Proceedings and testimony in electronic mode	None (new)
BNS § 72	Prohibition on disclosing the identity of victims of sexual offences	IPC § 228A
BNS § 232	Threatening a person to give false evidence	IPC § 195A

These provisions are of two kinds.[32] [33] Some regulate the courtroom, by closing it, hiding names in reports and permitting remote testimony. Others punish interference after it has occurred. Neither provides forward-looking protection outside the courtroom, such as security at a witness's home, relocation or a change of identity. The statutory scheme is therefore reactive and offence-specific.

2.3.2 Special statutes

Several special laws contain identity-protection clauses limited to their own offences. These include the repealed anti-terror statutes, namely TADA section 16 and POTA section 30, as

[32]BNSS §§ 193, 348, 366, 398, 530, supra note 6; cf. Code of Criminal Procedure, 1973, No. 2 of 1974, §§ 173, 311, 327 (India).
[33]Bharatiya Nyaya Sanhita, 2023, No. 45 of 2023, §§ 72, 232 (India) [hereinafter BNS]; cf. Indian Penal Code, 1860, No. 45 of 1860, §§ 195A, 228A (India).

ISSN: 2582-6433

well as MCOCA section 19, UAPA section 44, NIA Act section 17, section 15A of the SC/ST (Prevention of Atrocities) Act and section 33 of the POCSO Act.[34] The Supreme Court upheld the TADA provision in Kartar Singh subject to judicial safeguards, which later chapters treat as the template for balancing.[35] The Whistle Blowers Protection Act, 2014 protects those who disclose corruption, but it addresses disclosures in public administration rather than criminal trials and, as far as official records show, has not been brought into force.[36] Protection under special laws is thus available only to witnesses in a few categories of case.

2.4 THE WITNESS PROTECTION SCHEME, 2018

The 2018 Scheme arose from a writ petition in Mahender Chawla v. Union of India. The Union government prepared a draft in consultation with the States and other bodies, and the Supreme Court approved it, declared it the law under Articles 141 and 142 until Parliament enacts a statute, and directed the Union and the States to enforce it.[37] Its main features are set out below.

Feature	Content of the Scheme	Comment
Who is a witness?	Any person who has information or documents relevant to an offence, not only those who have been summoned	Broader than the trial-stage witness
Threat categories	Category A: threat to life; Category B: threat to safety, reputation or property; Category C: moderate threat, harassment or intimidation	Graded response tied to risk
Decision-maker	Competent Authority: District and Sessions Judge (chair), head of police in the district, head of prosecution in the district (member-secretary)	Judicial chair but police and prosecution sit on the body
Process	Application to the Competent Authority; threat analysis report by a senior police officer, normally within five working days; reasoned protection order	The police assess the threat

[34]Terrorist and Disruptive Activities (Prevention) Act, 1987, No. 28 of 1987, § 16 (India) (repealed); Prevention of Terrorism Act, 2002, No. 15 of 2002, § 30 (India) (repealed); Maharashtra Control of Organised Crime Act, 1999, Mah. Act No. 30 of 1999, § 19 (India); Unlawful Activities (Prevention) Act, 1967, No. 37 of 1967, § 44 (India); National Investigation Agency Act, 2008, No. 34 of 2008, § 17 (India); Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, No. 33 of 1989, § 15A (India); Protection of Children from Sexual Offences Act, 2012, No. 32 of 2012, § 33 (India).

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

[36]Whistle Blowers Protection Act, 2014, No. 17 of 2014 (India).

[37]Mahender Chawla, supra note 5 (approving the Witness Protection Scheme, 2018).

ISSN: 2582-6433

Feature	Content of the Scheme	Comment
Measures	No face-to-face contact with the accused; monitoring of calls and mail; change of residence; escort; security devices; identity protection; in-camera hearing; relocation and change of identity where needed	Wide range, from courtroom to life-long measures
Institutions and money	A Witness Protection Cell and a Witness Protection Fund in each State and Union Territory	Funding is left to State budgets, donations and costs

The Scheme has real strengths. It is a uniform national instrument with enforceable force, it grades protection by risk, it places a judge at the head of the decision-making body and it reaches beyond the courtroom. Its weaknesses concern structure and delivery rather than content, and they are examined in Chapter 5.

2.5 ASSESSMENT OF THE FRAMEWORK

On the first research question, the framework is adequate in principle but inadequate in structure. The constitutional foundation is sound. The statutes punish interference and regulate the courtroom, but they do not protect witnesses in advance. Special laws cover only specific offences. The 2018 Scheme fills the gap, but it derives its force from a judicial declaration and is implemented by State machinery whose capacity differs widely. A framework with no statutory guarantee of protection as of right, and no single institution accountable for it, cannot be called comprehensive.

CHAPTER-III

COMPARATIVE STUDY

The four jurisdictions represent distinct models. The United States relies on a federal relocation programme and open-court testimony. The United Kingdom combines judge-controlled special measures and statutory anonymity orders with a national protection service. France, an inquisitorial system, regulates anonymity through magistrates and a statutory bar on convictions resting only on anonymous evidence. Russia has a dedicated federal law on state protection that is executed largely by law-enforcement bodies. Each is examined for its legal basis, institutions, treatment of identity and fair-trial safeguards.

ISSN: 2582-6433

3.1 THE UNITED STATES

The federal Witness Security Program ("WITSEC") was created by the Organized Crime Control Act of 1970 and strengthened by the Witness Security Reform Act of 1984, and is now codified at 18 U.S.C. § 3521.[38] [39] The Attorney General may relocate and protect a witness, and members of the witness's family, whose testimony in an organised-crime or other serious case places them at risk. The statute authorises housing, relocation of household goods, subsistence, help with employment and the protection of identity and location. The programme is run by the U.S. Marshals Service, and entry follows a screening process by the Department of Justice and a written agreement by the witness.[40]

Protection is supplemented by criminal and civil law: witness tampering and retaliation are federal crimes, and a court may issue a civil order restraining harassment of a witness.[41] Threats to witnesses are also grounds for pre-trial detention and for admitting a witness's earlier statement under the doctrine of forfeiture by wrongdoing.[42]

The American design keeps confrontation intact. The Sixth Amendment gives the accused the right to confront witnesses, and the Supreme Court has allowed deviations from face-to-face testimony only on a case-specific finding of necessity. In Coy v. Iowa a screen between the accused and child witnesses was struck down, and in Maryland v. Craig one-way closed-circuit testimony was upheld where the trial court found it necessary to protect the child from trauma.[43]

Anonymity at trial is largely unavailable. The accused is ordinarily entitled to cross-examine a witness's identity, subject to the court's balancing of the informer's privilege against the defence's need, and the prosecution must disclose material bearing on credibility.[44] Protection is delivered mainly before and after the trial, by relocation and a new identity, so that the witness can testify openly. The main limitations are that the programme is reserved for witnesses whom the government needs in serious cases and that it depends on large federal resources.

[38]18 U.S.C. § 3521.
[39]Organized Crime Control Act of 1970, Pub. L. No. 91-452, 84 Stat. 922; Witness Security Reform Act of 1984, Pub. L. No. 98-473, 98 Stat. 1837.
[40]Pete Earley & Gerald Shur, WITSEC: Inside the Federal Witness Protection Program (2002).
[41]18 U.S.C. §§ 1512–1514; Victim and Witness Protection Act of 1982, Pub. L. No. 97-291, 96 Stat. 1248.
[42]18 U.S.C. § 3142(f)(2)(B); Fed. R. Evid. 804(b)(6); Giles v. California, 554 U.S. 353 (2008).
[43]U.S. Const. amend. VI; Coy v. Iowa, 487 U.S. 1012 (1988); Maryland v. Craig, 497 U.S. 836 (1990).
[44]Smith v. Illinois, 390 U.S. 129 (1968); Roviaro v. United States, 353 U.S. 53 (1957); Giglio v. United States, 405 U.S. 150 (1972).

ISSN: 2582-6433

3.2 THE UNITED KINGDOM

The Youth Justice and Criminal Evidence Act 1999 allows a court to give special measures directions for vulnerable and intimidated witnesses: screens, live link, evidence in private, removal of wigs and gowns, video-recorded evidence-in-chief and cross-examination, intermediaries and communication aids.[45] The Act followed the 1998 report Speaking Up for Justice.[46] A witness who fears testifying because of the accused or his associates may qualify, and the court decides on the facts of the case.

Anonymity is more restricted. In R v. Davis the House of Lords held that a conviction based solely or decisively on the evidence of anonymous witnesses breached the common-law right to confront accusers.[47]

Parliament responded first with a temporary statute and then with sections 86 to 97 of the Coroners and Justice Act 2009, under which a court may make a witness anonymity order only if three conditions are met. The order must be necessary to protect the safety of the witness or another person or to prevent serious damage to property or real harm to the public interest, it must be consistent with the defendant receiving a fair trial, and it must be necessary in the interests of justice because the witness would not otherwise testify.[48] The court must also weigh, among other things, the defendant's general right to know the witness's identity, the importance of the witness's credibility and whether the evidence is the sole or decisive evidence. Related rules admit the statement of a witness who does not testify through fear, subject to the fair-trial controls that the European Court of Human Rights applied in Al-Khawaja.[49] Intimidating a witness is a statutory offence, and the Serious Organised Crime and Police Act 2005 enables police forces to provide protection, which is delivered through a national protection service.[50] The British model is judge-controlled, condition-based and consistently tied to the fair-trial guarantee.

3.3 FRANCE

The French Code of Criminal Procedure provides graduated protection in articles 706-57 to

[45]Youth Justice and Criminal Evidence Act 1999, c. 23, §§ 16–33 (UK).
[46]Home Off., Speaking Up for Justice: Report of the Interdepartmental Working Group on the Treatment of Vulnerable or Intimidated Witnesses in the Criminal Justice System (1998).
[47]Davis, supra note 21.
[48]Criminal Evidence (Witness Anonymity) Act 2008, c. 15 (UK) (expired); Coroners and Justice Act 2009, c. 25, §§ 86–97 (UK).
[49]Criminal Justice Act 2003, c. 44, § 116(2)(e) (UK); Al-Khawaja, supra note 30.
[50]Criminal Justice and Public Order Act 1994, c. 33, § 51 (UK); Serious Organised Crime and Police Act 2005, c. 15, §§ 82–94 (UK).

ISSN: 2582-6433

706-63-1.[51] A witness at risk may be authorised to give the address of a police or gendarmerie station instead of a home address. Full anonymity (the témoin anonyme) may be authorised by the juge des libertés et de la détention on the application of the prosecutor or investigating judge where the offence carries a minimum penalty of three years' imprisonment and the witness's life or physical integrity, or that of relatives, would otherwise be endangered. The identity is recorded in a confidential file. The defence may contest the authorisation and may seek a confrontation with the witness through a technical device that conceals identity. The regime was introduced by legislation in 2001 and expanded in 2004.[52] Its central safeguard is article 706-62, which bars a conviction resting solely on statements made under anonymity.[53] The Constitutional Council upheld the 2004 regime on the basis that these guarantees preserve the rights of the defence.[54] A separate procedure, administered by a national commission, allows at-risk witnesses and cooperating defendants to receive protective measures, including a new identity. French law thus places the decision to grant anonymity with a magistrate, sets a statutory threshold and lets the defence challenge it.

3.4 RUSSIA

Federal Law No. 119-FZ of 2004 on state protection of victims, witnesses and other participants in criminal proceedings is the principal Russian statute.[55] It covers protected persons and their close relatives and lists measures that include personal protection, protection of home and property, special means of individual protection and warning, confidentiality of information about the protected person, relocation, replacement of documents, change of appearance, change of place of work or study and temporary placement in a safe place. The decision is taken by the investigator, prosecutor or court, and implementation is entrusted to law-enforcement and security bodies. The Criminal Procedure Code allows the real identity of a witness to be withheld, with a pseudonym used in the case file, where there is a real threat, and allows a witness to be examined in conditions that exclude visual observation by others in the

[51]Code de procédure pénale [C. pr. pén.] arts. 706-57 to 706-63-1 (Fr.).
[52]Loi 2001-1062 du 15 novembre 2001 relative à la sécurité quotidienne [Law 2001-1062 of Nov. 15, 2001 on Everyday Security], Journal Officiel de la République Française [J.O.] [Official Gazette of France], Nov. 16, 2001; Loi 2004-204 du 9 mars 2004 portant adaptation de la justice aux évolutions de la criminalité [Law 2004-204 of Mar. 9, 2004 Adapting Justice to Developments in Crime], J.O., Mar. 10, 2004.
[53]C. pr. pén. art. 706-62 (Fr.).
[54]Conseil constitutionnel [CC] [Constitutional Court] decision No. 2004-492DC, Mar. 2, 2004 (Fr.).
[55]Federal Law No. 119-FZ of Aug. 20, 2004, On State Protection of Victims, Witnesses and Other Participants in Criminal Proceedings (Russ.) (unofficial translation); William Burnham et al., Law and Legal System of the Russian Federation (6th ed. 2015).

ISSN: 2582-6433

courtroom, while the parties may still put questions.[56]

Russian law is comprehensive on paper in the range of measures. Its weakness for comparative purposes is institutional. Both the decision and the delivery rest with the executive and its law-enforcement organs, with limited independent review, and since Russia ceased to be a party to the European Convention on Human Rights in September 2022, its practice is no longer subject to Strasbourg scrutiny.[57] The Russian experience is a caution against placing protection entirely in the hands of the agencies that investigate the case.

3.5 COMPARATIVE SUMMARY

Dimension	United States	United Kingdom	France	Russia
Legal basis	18 U.S.C. § 3521; Organized Crime Control Act 1970	Youth Justice and Criminal Evidence Act 1999; Coroners and Justice Act 2009; Serious Organised Crime and Police Act 2005	Code of Criminal Procedure arts. 706-57 to 706-63-1	Federal Law No. 119-FZ (2004); Criminal Procedure Code
Who decides	Attorney General; Marshals Service implements	Judge for special measures and anonymity; police and national service for protection	Magistrate (juge des libertés et de la détention) for anonymity; national commission for new identities	Investigator, prosecutor or court; law-enforcement bodies implement
Identity at trial	Witness testifies openly; new identity afterwards	Anonymity only under statutory conditions	Address at police station; full anonymity at investigation stage	Pseudonym in file; examination without visual observation

[56]Ugolovno-protsessual'nyi kodeks Rossiiskoi Federatsii [UPK RF] [Criminal Procedure Code] arts. 11, 56(9), 278(5) (Russ.).
[57]Council of Eur., Comm. of Ministers, Resolution CM/Res(2022)3 (Mar. 23, 2022).

ISSN: 2582-6433

Dimension	United States	United Kingdom	France	Russia
Fair-trial safeguard	Sixth Amendment; case-specific necessity; disclosure of credibility material	Fair-trial condition; sole or decisive evidence scrutiny; Article 6 ECHR	No conviction solely on anonymous evidence; right to contest and to technical confrontation	Parties may question the witness; limited external review

3.6 LESSONS FOR INDIA

Six lessons follow for the Indian framework.

1. **A statutory basis with clear criteria.**

   The United States, the United Kingdom and France each rest protection on legislation that states who qualifies and on what test. India's 2018 Scheme has binding force, but the decision criteria and the rights of the witness are not set out in a statute.

2. **Separation of the judicial and executive roles.**

   The United Kingdom and France give the decision on anonymity to a judge or magistrate and leave delivery to a separate service. India's Competent Authority combines a judge with the police and prosecution in one body that also relies on a police threat report.

3. **Counterbalancing safeguards written into law.**

   The bar on convictions resting solely or decisively on anonymous evidence is explicit in France and in the United Kingdom through the sole-or-decisive scrutiny. Indian law has no equivalent statutory rule.

4. **A specialist, funded protection agency with national reach.**

   The U.S. Marshals Service and the British national service operate beyond local policing. India's district-level Witness Protection Cells and State-funded Witness Protection Funds depend on State capacity.

5. **Protection without anonymity where possible.**

   The American model shows that relocation and a new identity can protect witnesses while they testify openly, which keeps the trial fair. Anonymity should be reserved for cases in which no lesser measure suffices.

6. **Caution about executive-controlled protection.**

   Russia illustrates the risk when decision and delivery sit with the investigating agencies

ISSN: 2582-6433

and there is no independent check.

CHAPTER-IV

ROLE OF JUDICIARY

4.1 THE JUDICIAL METHOD

Indian courts have been the main architects of witness protection. Their method follows the Vishaka model: where legislation is absent and fundamental rights are at stake, the Supreme Court may lay down binding guidelines under Articles 141 and 142 until Parliament acts.[58] Witness protection developed in three phases. In the first, courts recognised the problem and the permissible limits of secrecy. In the second, they devised interim protections for particular classes of witness. In the third, the Supreme Court gave the country a national scheme.

4.2 PHASE ONE: RECOGNITION AND LIMITS

The Supreme Court accepted early that the identity of informants may sometimes be withheld in the public interest, as it did in a preventive-detention case in 1952.[59] The decisive step for criminal trials was Kartar Singh v. State of Punjab, which upheld section 16 of TADA, the provision permitting identity concealment and in-camera proceedings.[60] The Court did not treat secrecy as unrestricted. It required that the trial judge be satisfied on the material that the witness's life is in danger, that reasons be recorded, and that the defence retain a meaningful opportunity to test the evidence. This condition-based approach is the Indian ancestor of the proportionality framework applied in Chapter 5. In Swaran Singh v. State of Punjab the Court lamented that witnesses were being threatened and that the State was failing to protect them, and it linked this failure directly to the collapse of trials.[61]

4.3 PHASE TWO: INTERIM PROTECTIONS

The second phase produced concrete measures, mostly in response to particular failures of justice. In Neelam Katara v. Union of India, a petition arising from the murder of the petitioner's son, the Delhi High Court laid down a witness-protection protocol, including protective orders and identity safeguards, pending legislation.[62] In Zahira Habibulla H. Sheikh

[58]Vishaka v. State of Rajasthan, (1997) 6 SCC 241 (India).
[59]Gurbachan Singh v. State of Bombay, A.I.R. 1952 S.C. 221 (India).
[60]Kartar Singh, supra note 37.
[61]Swaran Singh, supra note 2.
[62]Neelam Katara, supra note 3.

ISSN: 2582-6433

v. State of Gujarat, the Best Bakery case, key eyewitnesses turned hostile under pressure and the accused were acquitted.

The Supreme Court set aside the acquittals and ordered a retrial outside Gujarat. It held that a fair trial must be fair to the victim and to society, that a trial court cannot be a silent spectator when witnesses are being coerced, and that legislative measures to protect witnesses are needed.[63] In Sakshi v. Union of India the Court issued directions for the examination of child and other sexual-abuse victims. The victim should not be made to face the accused directly, so a screen or similar arrangement is to be used. Cross-examination questions should be put through the presiding officer in writing, and adequate breaks should be allowed.[64] The Court also accepted that testimony may be given remotely, since in State of Maharashtra v. Praful B. Desai it held that a witness examined by video-conferencing is "present" for the purposes of the criminal procedure law.[65] These decisions gave Indian trial courts tools that the statute had not provided.

4.4 PHASE THREE: THE NATIONAL SCHEME

Mahender Chawla v. Union of India is the high point of judicial involvement. The Court recorded that witnesses were being threatened and that no uniform protective law existed. It approved the 2018 Scheme, directed that it be law under Articles 141 and 142 until Parliament enacts a statute, and required the Union and the States to give effect to it.[66] This turned a patchwork of orders into a single national instrument with a defined process. The Court's account in Ramesh v. State of Haryana of why witnesses turn hostile, including threat, inducement and fear of the accused, supplies the factual premise for the Scheme.[67]

Beyond landmark rulings, trial judges have ordinary powers that serve protection. They may summon or recall a witness, put questions to witnesses to discover the truth, hold proceedings in camera, allow remote testimony and cancel the bail of an accused who interferes with witnesses.[68] These powers depend on the judge noticing the threat, on the witness having the confidence to report it and on the prosecution making the application. They are therefore weakest where protection is most needed.

[63]Zahira, supra note 1.
[64]Sakshi, supra note 4.
[65]State of Maharashtra v. Praful B. Desai, (2003) 4 SCC 601 (India).
[66]Mahender Chawla, supra note 5.
[67]Ramesh, supra note 11.
[68]BNSS §§ 348, 366, 483, supra note 6; Bharatiya Sakshya Adhiniyam, 2023, No. 47 of 2023, § 168 (India); cf. Code of Criminal Procedure, 1973, No. 2 of 1974, §§ 311, 327, 439(2) (India).

ISSN: 2582-6433

4.5 THE TRIAL COURT'S EVERYDAY POWERS

Beyond landmark rulings, trial judges have ordinary powers that serve protection. They may summon or recall a witness, put questions to witnesses to discover the truth, hold proceedings in camera, allow remote testimony and cancel the bail of an accused who interferes with witnesses.[69] These powers depend on the judge noticing the threat, on the witness having the confidence to report it and on the prosecution making the application. They are therefore weakest where protection is most needed.

4.6 ASSESSMENT

The judiciary's contribution is substantial but structurally limited. Four limits stand out.

First, judicial law-making is a stop-gap. The Court in Mahender Chawla said so expressly, yet eight years after the Scheme and after the enactment of the BNSS, there is still no central statute.

Second, court-made rules are issue-specific and episodic. Directions in Sakshi concern sexual-abuse victims, and Neelam Katara operates in Delhi, so they do not form a general guarantee.

Third, courts can direct but cannot build institutions. Protection requires trained personnel, funds, safe housing and monitoring. Judgments cannot create these, and they depend on executive action that the courts must then chase.

Fourth, in the absence of statutory safeguards, courts decide case by case how far protection may curtail the accused's rights. This produces uneven outcomes, which is the problem addressed in Chapter 5.

The trajectory from Kartar Singh to Mahender Chawla shows judicial intervention reaching its limit. What remains is institutional reform, which only the legislature and the executive can deliver.

CHAPTER-V

IMPLEMENTATION, PROPORTIONALITY AND THE FAIR-TRIAL BALANCE

This chapter applies the framework to the second and third research questions. It first tests whether the 2018 Scheme can deliver protection in practice and then asks how protective measures can be reconciled with the accused's right to a fair trial.

[69]BNSS §§ 348, 366, 483, supra note 6; Bharatiya Sakshya Adhiniyam, 2023, No. 47 of 2023, § 168 (India); cf. Code of Criminal Procedure, 1973, No. 2 of 1974, §§ 311, 327, 439(2) (India).

ISSN: 2582-6433

5.1 TESTING THE 2018 SCHEME

The Scheme's content is broadly sound, but seven features of its design limit its effectiveness.

Institutional design- The Competent Authority is chaired by the District and Sessions Judge, which gives it judicial standing, but its other members are the head of police and the head of prosecution in the district, and the threat analysis is prepared by a police officer.[70] The agencies that investigate and prosecute therefore assess the threat and sit in judgment on the application. This is a risk where the threat arises from, or is tolerated by, local police or powerful accused persons. A district judge who also carries a full judicial docket is, in addition, a bottleneck.

Speed and access- The process is built around an application, a threat report and a reasoned order. Threats are most acute at the time of the First Information Report and the recording of statements, and often precede any chance to apply. Many witnesses will not know that the Scheme exists, and the system depends on a witness or the prosecutor invoking it. Immediate interim protection and proactive assessment in high-risk categories of case, such as organised crime, sexual violence and cases against the powerful, are needed.

Funding- The Scheme places the Witness Protection Fund with each State and Union Territory, financed from State budgets, donations and court-imposed costs. Protection is expensive, particularly relocation and long-term security, so capacity will differ sharply between States.

Fragmentation- BNSS section 398 requires each State to notify its own scheme but neither adopts the 2018 Scheme as a minimum standard nor prescribes one.[71] The text does not settle how State schemes relate to the 2018 Scheme, and in the absence of a national floor, the level of protection a witness receives may depend on the State of trial.

Cross-State protection- Relocation and change of identity are the most resource-intensive measures. A witness relocated to another State depends on that State's machinery and cooperation, which neither the Scheme nor section 398 secures.

Accountability- The sources reviewed for this study disclose no consolidated national data on applications, orders, refusals or expenditure. Without such data, the Scheme cannot be evaluated, and there is no independent monitor or clear route of redress for a witness whose application fails or whose protection lapses.

Participation- The Scheme concentrates on safety and identity. Whether a witness can participate in practice also depends on matters outside it: the willingness of courts to use remote testimony under BNSS section 530, the availability of safe deposition rooms, allowances, and

[70]Mahender Chawla, supra note 5 (Witness Protection Scheme, 2018).
[71]BNSS § 398, supra note 6.

ISSN: 2582-6433

the avoidance of repeated adjournments.[72] A witness who is safe but is made to attend court repeatedly may still withdraw.

On the second research question, the Scheme is effective in concept and reasonably comprehensive in the measures it lists, but its institutional design, funding model and lack of national oversight make delivery uncertain. It is a sound floor resting on an uncertain structure.

5.2 BALANCING PROTECTION AND THE ACCUSED'S RIGHT TO FAIR TRIAL

The accused has the right to be tried on evidence taken in his presence, to cross-examine witnesses, to know the case against him and to a public hearing.[73] Protective measures qualify each of these rights. Comparative law and Indian precedent converge on a six-part proportionality test:

1. **Necessity-** The threat must be real and supported by material, not assumed.
2. **Least restrictive measure-** The court must prefer a measure that interferes less, such as a screen over anonymity.
3. **Judicial control-** A judge, not an executive body, decides what limits the defence, and records reasons.
4. **Counterbalancing safeguards-** The defence must retain a meaningful chance to test the evidence.
5. **Probative caution-** A conviction must not rest solely or decisively on untested anonymous evidence.
6. **Review-** The measure ends when the threat ceases.

The first four are in Kartar Singh, the fifth in the UK and French rules and the Strasbourg case law, and the sixth in the structure of the 2018 Scheme.[74] The table shows how the test applies to each measure.

Protective measure	Accused's interest affected	Safeguard needed
Concealing the witness's identity	Knowing the accuser; testing credibility	Judge decides on recorded reasons; defence gets all credibility material; no conviction resting solely on the evidence

[72]BNSS §§ 396, 530, supra note 6; cf. Code of Criminal Procedure, 1973, No. 2 of 1974, § 357A (India).
[73]BNSS §§ 308, 366, supra note 6; cf. Code of Criminal Procedure, 1973, No. 2 of 1974, §§ 273, 327 (India).
[74]Kartar Singh, supra note 37; Al-Khawaja, supra note 30; Coroners and Justice Act 2009, supra note 50, §§ 86–97; C. pr. pén. art. 706-62, supra note 55.

ISSN: 2582-6433

Protective measure	Accused's interest affected	Safeguard needed
In-camera hearing	Public trial	Limit to the necessary part; record reasons; pronounce judgment publicly
Screen or video link	Face-to-face confrontation; observing demeanour	Judge sees the witness; accused can hear and instruct counsel; cross-examination fully allowed
Relocation or change of identity	Investigating the witness's background	Disclose prior identity and criminal record to the court and defence counsel
Withholding parts of statements before trial	Disclosure; preparation of defence	Court reviews redactions; defence receives what it needs to meet the case
Cancelling bail or restraining an accused	Liberty; presumption of innocence	Evidence of actual interference; proportionate, time-limited conditions

Two features of the Indian framework weaken this balance. The first is the interface between bodies. The Competent Authority is an administrative body, while questions of disclosure and confrontation are for the trial court. The Scheme's text does not fully explain how a protection order interacts with the trial court's powers.

As far as the text shows, the accused has no formal role before the Competent Authority. That is defensible for security reasons, but it makes it essential that the trial court keeps control over anything touching testimony. The second is that India has no statutory test of the kind found in the United Kingdom and France, so each trial judge must devise the safeguards afresh.

The risk runs in both directions. Over-protection invites misuse, such as an unfounded claim of threat to blunt cross-examination, while under-protection yields unfair trials in which prosecution witnesses are silenced. On the third research question, therefore, the balance is achievable but is currently left to judicial discretion rather than secured by rule.

5.3 TOWARDS A TIERED MODEL

The analysis points to a three-tier structure matching the degree of intrusion. At the first tier, courtroom measures such as screens, video links and in-camera hearings would be granted by

ISSN: 2582-6433

the trial judge on application. At the second tier, physical protection and relocation would be administered by a dedicated, funded protection agency on an independent threat assessment. At the third tier, anonymity would be available only on a judicial order meeting statutory conditions. This model lets the least restrictive measure be applied first and reserves the most intrusive measure for the cases in which it is unavoidable.

CHAPTER-VI

CONCLUSION

6.1 FINDINGS

1. **Constitutional and statutory framework (first research question)**

   The constitutional foundation is adequate in principle: Article 21 supplies a right to life and security for witnesses and a fair-trial guarantee that extends to victims and society. The statutory framework is reactive and offence-specific. It punishes interference after the event, regulates the courtroom and protects witnesses only in particular categories of case. No statute guarantees protection as of right, and BNSS section 398 delegates the design of schemes to the States. The framework is therefore partially adequate in substance and inadequate in structure.

2. **The Witness Protection Scheme, 2018 (second research question)**

   The Scheme is a sound national floor. It grades protection by threat, is chaired by a judge, offers a wide range of measures and extends beyond the courtroom. Its effectiveness is limited by a police-heavy decision-making and assessment process, an application-driven route to protection, State-dependent funding, the absence of cross-State and national oversight, the lack of public data, and little attention to participation. It is effective in concept but not yet comprehensive in delivery.

3. **Balance with the accused's rights (third research question)**

   The two interests can be reconciled by a proportionality test of necessity, least restrictive measure, judicial control, counterbalancing safeguards, probative caution and review. Indian law reaches this balance only through case-by-case judicial discretion. The Scheme does not explain its interface with the trial court, and no statute sets conditions for anonymity or limits on reliance on anonymous evidence.

4. **Need for reform (fourth research question)**

   The comparison supports six design lessons: a statutory basis with clear criteria, separation of the body that decides from the body that delivers, safeguards written into

ISSN: 2582-6433

law, a specialist funded agency with national reach, a preference for protection without anonymity, and caution about executive-controlled protection.

5. **Hypothesis**

   The findings do not support the null hypothesis. The alternate hypothesis is supported: the framework is fragmented, dependent on executive discretion and insufficiently safeguarded against under-protection and over-restriction. This conclusion rests on doctrinal analysis and would be strengthened by empirical data on State schemes.

6.2 SUGGESTIONS

The suggestions below implement the tiered model proposed in Chapter 5.

Suggested reform	Problem addressed	Source of the idea
Enact a central Witness Protection Act, or add a chapter to the BNSS, making protection a statutory right and setting minimum national standards to which State schemes under section 398 must conform	Fragmentation; reliance on a judicial declaration	Statutory regimes in the United States, the United Kingdom and France
Separate decision from delivery: a judicially chaired authority decides, and an independent specialist unit outside the investigating police assesses threats and delivers protection	Police-heavy design	United Kingdom and France; the Russian experience as a caution
Provide immediate interim protection on request, and require automatic threat assessment in listed high-risk categories	Delay and dependence on a witness's application	Comparative design
Create a ring-fenced Witness Protection Fund with central assistance in addition to State contributions	Unequal State capacity	United States federal funding
Enact a statutory anonymity test: a real threat, consistency with a fair trial and necessity in the interests of justice, decided by a judge, with a bar on conviction solely or decisively on anonymous evidence and a right for the defence to challenge	Uneven case-by-case balancing	Coroners and Justice Act 2009; Code of Criminal Procedure art. 706-62; Kartar Singh

ISSN: 2582-6433

Suggested reform	Problem addressed	Source of the idea
Establish inter-State relocation protocols and a national coordinating body	Cross-State protection	The U.S. Marshals Service model
Adopt a witness charter with rights to information, allowances and safe deposition rooms in every district, and promote remote testimony under BNSS section 530	Participation and secondary victimisation	United Kingdom special measures; Sakshi
Require annual public reporting, publish national data and give an appeal to the High Court against refusals	Accountability	Principles of administrative review
Strengthen offences for disclosing protected identities and link protection to victim compensation and rehabilitation under BNSS section 396	Enforcement and long-term rehabilitation	United States and United Kingdom offences

Priority should go to the first three reforms, because they determine who decides, how quickly protection arrives and on what legal footing. A statute that sets these three points would convert the 2018 Scheme from a judicial stop-gap into a durable institution and would give trial judges the rules they currently have to improvise.

6.3 CONCLUSION

The history of witness protection in India runs from judicial intervention to the beginnings of institutional reform. Courts recognised the problem in Swaran Singh and Zahira, devised safeguards in Neelam Katara and Sakshi, and in Mahender Chawla gave the country a binding national scheme. Section 398 of the BNSS shows that Parliament accepts the need for protection but has not yet provided a national standard. What courts can do has largely been done. What remains, namely institutions, funds, independent assessment, statutory safeguards and accountability, can be supplied only by legislation and executive action.

Protection of witnesses should not be seen as opposed to the accused's rights. A trial in which witnesses are free to speak produces evidence that is more reliable and a verdict that is more legitimate, which serves the accused as much as the prosecution.

ISSN: 2582-6433

REFERENCES

Zahira Habibulla H. Sheikh v. State of Gujarat, (2004) 4 SCC 158 (India) (quoting Jeremy Bentham, Rationale of Judicial Evidence (1827)).

Swaran Singh v. State of Punjab, (2000) 5 SCC 668 (India).

Neelam Katara v. Union of India, ILR (2003) 2 Del 377 (India).

Sakshi v. Union of India, (2004) 5 SCC 518 (India).

Bharatiya Nagarik Suraksha Sanhita, 2023, No. 46 of 2023, § 398 (India) [hereinafter BNSS].

Comm. on Reforms of Crim. Just. Sys., Gov't of India, Report, vol. I (2003) [hereinafter Malimath Committee Report].

Law Comm'n of India, Report No. 198, Witness Identity Protection and Witness Protection Programmes (2006).

BNSS § 398, supra note 6.

Ramesh v. State of Haryana, (2017) 1 SCC 529 (India).

Law Comm'n of India, Report No. 14, Reform of Judicial Administration (1958).

Law Comm'n of India, Report No. 154, The Code of Criminal Procedure, 1973 (1996).

Law Comm'n of India, Report No. 172, Review of Rape Laws (2000).

Malimath Committee Report, supra note 7; Law Comm'n of India, Report No. 198, supra note 8.

Swaran Singh, supra note 2; Zahira, supra note 1; Neelam Katara, supra note 3; Sakshi, supra note 4; Ramesh. supra note 11.

Mahender Chawla, supra note 5.

U.N. Off. on Drugs & Crime, Good Practices for the Protection of Witnesses in Criminal Proceedings Involving Organized Crime (2008).

Doorson v. Netherlands, App. No. 20524/92, 22 Eur. H.R. Rep. 330 (1996).

BNSS $§ 193, 348, 366, 398, 530, supra note 6; cf. Code of Criminal Procedure, 1973, No. 2 of 1974, $§ 173, 311, 327 (India).

Bharatiya Nyaya Sanhita, 2023, No. 45 of 2023, §§ 72, 232 (India) [hereinafter BNS]; cf. Indian Penal Code 1860, No. 45 of 1860, §§ 195A, 228A (India).

Terrorist and Disruptive Activities (Prevention) Act, 1987, No. 28 of 1987, § 16 (India) (repealed); Prevention of Terrorism Act, 2002, No. 15 of 2002, § 30 (India) (repealed); Maharashtra Control of Organised Crime Act, 1999, Mah. Act No. 30 of 1999, § 19 (India); Unlawful Activities (Prevention) Act, 1967, No. 37 of 1967, § 44 (India); National Investigation Agency Act, 2008, No. 34 of 2008, § 17 (India); Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, No. 33 of 1989, § 15A (India); Protection of

ISSN: 2582-6433

Children from Sexual Offences Act, 2012, No. 32 of 2012, § 33 (India).

Whistle Blowers Protection Act, 2014, No. 17 of 2014 (India).

Mahender Chawla, supra note 5 (approving the Witness Protection Scheme, 2018).

Criminal Evidence (Witness Anonymity) Act 2008, c. 15 (UK) (expired); Coroners and Justice Act 2009, c.25, 8$ 86-97 (UK).

Criminal Justice Act 2003, c. 44, § 116(2)(e) (UK); Al-Khawaja, supra note 30.

Criminal Justice and Public Order Act 1994, c. 33, § 51 (UK); Serious Organised Crime and Police Act 2005,

c.15, $8 82-94 (UK).

Code de procédure pénale [C. pr. pén.] arts. 706-57 to 706-63-1 (Fr.).

Loi 2001-1062 du 15 novembre 2001 relative à la sécurité quotidienne [Law 2001-1062 of Nov. 15, 2001 on Everyday Security], Journal Officiel de la République Française [J.O.] [Official Gazette of France], Nov. 16, 2001; Loi 2004-204 du 9 mars 2004 portant adaptation de la justice aux évolutions de la criminalité [Law 2004-204 of Mar. 9, 2004 Adapting Justice to Developments in Crime], J.O., Mar. 10, 2004. 53C. pr. pén. art. 706-62 (Fr.).

Conseil constitutionnel [CC] [Constitutional Court] decision No. 2004-492DC, Mar. 2, 2004 (Fr.).

Federal Law No. 119-FZ of Aug. 20, 2004, On State Protection of Victims, Witnesses and Other Participants il Criminal Proceedings (Russ.) (unofficial translation); William Burnham et al., Law and Legal System of the Russian Federation (6th ed. 2015).

Council of Eur., Comm. of Ministers, Resolution CM/Res(2022)3 (Mar. 23, 2022).

Kangar Singh, supra note 37; A.-Khawaja, supra note 30; Coroners and Justice Act 2009, supra note 50, §§ 86-97; C.pr.pén.art.706-62, supra note 55.