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From Judicial Directives to Statutory Mandates: An Evolutionary Analysis of the Witness Protection Ecosystem in India

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ABSTRACT

The integrity of a criminal justice system depends heavily on the willingness of witnesses to depose truthfully and without fear. Historically described as the eyes and ears of justice, witnesses in India have long operated within a precarious landscape dominated by political intimidation, socio-economic coercion and systemic administrative apathy. This paper presents a legal and evolutionary analysis of the witness protection ecosystem in India, examining its transformation from ad hoc judicial directions into a formal statutory obligation under Section 398 of the Bharatiya Nagarik Suraksha Sanhita, 2023. Focusing on the socio-legal landscape of Uttar Pradesh, a state marked by high volumes of criminal litigation and entrenched power dynamics, the study evaluates the structural transition triggered by landmark rulings of the Supreme Court, the operationalisation of the Witness Protection Scheme, 2018, and recent procedural mandates. By synthesising doctrinal jurisprudence, comparative international frameworks and statutory provisions, the analysis identifies critical structural deficiencies: the non-operationalisation of witness protection funds, the absence of police accountability, and the socio-economic vulnerability of witnesses in cases not treated as heinous. The paper offers strategic recommendations, including the creation of independent witness protection cells, technological integration for testimonial anonymity, and statutory accountability mechanisms to bridge the divide between legislative intent and institutional realisation.

Keywords: *Witness Protection Scheme, Bharatiya Nagarik Suraksha Sanhita (BNSS), Judicial Jurisprudence, Criminal Justice Reform*

I. INTRODUCTION

The administration of criminal justice relies fundamentally on the availability of reliable, uncoerced evidence. Witnesses serve as the primary conduits of factual truth, bridging the gap between the occurrence of a crime and its judicial determination. Across jurisdictions, however,

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the vulnerability of witnesses to external pressures, ranging from physical violence and economic boycotts to subtle psychological harassment, presents a persistent threat to the rule of law. When witnesses are coerced into silence or forced to turn hostile, the criminal trial loses its truth-seeking mandate, and the consequences are high acquittal rates, diminished public trust and institutional failure.

Historically, India lacked a comprehensive legislative framework dedicated to safeguarding witnesses. The Code of Criminal Procedure, 1973 contained minimal and fragmented provisions addressing witness convenience, such as basic travel allowances (*batta*) and discretionary in-camera proceedings in sensitive sexual offence cases. The physical safety, procedural anonymity and long-term security of witnesses facing organised crime syndicates or politically influential accused persons were largely neglected. The burden of protecting witness integrity consequently fell almost entirely upon the judiciary, which relied on its inherent powers to issue reactive directions case by case.

The international legal paradigm, established through instruments such as the United Nations Convention against Transnational Organized Crime (Palermo Convention) and the Rome Statute of the International Criminal Court, advocates a dual-track witness protection framework.¹ That framework balances robust physical protection and identity concealment for witnesses against the right of the accused to a fair trial and to effective cross-examination.² The incorporation of these global benchmarks into Indian law gained momentum through judicial intervention, culminating in the approval by the Supreme Court of the Witness Protection Scheme, 2018 in *Mahender Chawla v. Union of India*.³

The regime has shifted again with the enactment of the Bharatiya Nagarik Suraksha Sanhita, 2023. Under Section 398 of the Sanhita, the duty of the state to protect witnesses has moved from a judicially crafted directive to a statutory obligation on every State Government to prepare and notify a Witness Protection Scheme for the State. Whether the schemes so notified are funded and enforced is a separate question, and it is the question this study pursues. In a state such as Uttar Pradesh, where complex social structures, feudal power dynamics and a heavy criminal trial docket intersect, the institutionalisation of witness protection is critical.⁴ This

¹ United Nations Convention against Transnational Organized Crime art. 24, Nov. 15, 2000, 2225 U.N.T.S. 209 (Palermo Convention); Rome Statute of the International Criminal Court art. 68, July 17, 1998, 2187 U.N.T.S. 3.

² Rome Statute of the International Criminal Court art. 68(1), *supra* note 1 (protective measures must not be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial).

³ *Mahender Chawla v. Union of India*, (2019) 14 S.C.C. 615, also reported as (2018) 15 S.C.C. 633 and 2018 SCC OnLine SC 2679.

⁴ *Hari v. State of U.P.*, Crim. App. No. 186 of 2018 (S.C. India, decided Nov. 26, 2021), 2021 LiveLaw (SC) 685.

study traces the conceptual, judicial and legislative evolution of the witness protection ecosystem in India, examining its practical viability, institutional gaps and potential reforms.

II. STATEMENT OF THE PROBLEM

Despite the statutory codification of witness protection under Section 398 of the Bharatiya Nagarik Suraksha Sanhita, 2023, a significant gap separates normative legal principle from operational reality. Judicial precedent and legislative enactment affirm the right of a witness to testify without fear as an integral component of Article 21 of the Constitution, but the institutional infrastructure required to enforce that right remains underdeveloped.

In Uttar Pradesh, the execution of witness protection directives faces systemic challenges.

- **Reactive reliance on local police:** protection mechanisms rely heavily on local police stations, which creates a conflict of interest where the threat emanates from influential local figures or from state actors.
- **Underused Witness Protection Funds:** the dedicated Witness Protection Funds appear to remain substantially undrawn, which hinders essential measures such as relocation, identity transformation and financial support.
- **Information asymmetry:** nothing requires investigating officers or public prosecutors to inform witnesses at the pre-trial stage of their entitlements under the Witness Protection Scheme, 2018 or under the Guidelines for Recording of Evidence of Vulnerable Witnesses, 2024.
- **Unaddressed lower-tier crimes:** threat assessment gravitates towards high-profile and heinous offences, leaving witnesses in localised communal, land and caste disputes exposed to severe retaliation.

Without an institutionalised accountability mechanism, clear procedural guidance on Threat Analysis Reports and technological safeguards, statutory mandates risk becoming mere procedural directives. This study addresses these systemic gaps and proposes a structured, accountable and operationally viable witness protection framework.

III. OBJECTIVES OF THE STUDY

- To trace the jurisprudential and statutory evolution of the witness protection ecosystem in India, analysing the transition from common law judicial directives to Section 398 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

- To evaluate the judicial frameworks established by the Supreme Court of India and the Guidelines for Recording of Evidence of Vulnerable Witnesses, 2024 in relation to vulnerable witnesses and testimonial aids.
- To examine critically the structural and socio-economic impediments that cause witness hostility in criminal trials across urban and rural settings in Uttar Pradesh.
- To analyse international best practices, including the models of the United Kingdom, the United States and South Africa, and to assess their adaptability to the federal criminal justice structure of India.
- To formulate a legislative, technological and administrative accountability model designed to strengthen the implementation of witness protection frameworks in Uttar Pradesh.

IV. REVIEW OF THE LITERATURE

A. Early Law Commission Reports and Policy Commissions

The legal discourse surrounding witness hardship in India originated in the Fourteenth Report of the Law Commission of India (1958),⁵ which addressed administrative inconvenience, inadequate court facilities and the minimal financial compensation (*batta*) paid to witnesses for attendance at trial. Decades later, the Fourth Report of the National Police Commission (1980)⁶ recognised witness hostility as a structural problem driven by police heavy-handedness, prolonged trial delays and the absence of a secure environment at the investigation stage.

The One Hundred Fifty-Fourth Report of the Law Commission (1996)⁷ recommended dedicated witness protection legislation and advocated that the State bear the financial cost of safeguarding key witnesses in serious crimes. The Report of the Committee on Reforms of Criminal Justice System (2003), known as the Malimath Committee Report,⁸ followed with a victim-centric model of criminal justice. The Committee emphasised that witnesses deserve dignity and state-backed security, and proposed standalone witness protection legislation together with statutory safeguards against intimidation.

⁵ LAW COMM'N OF INDIA, *Fourteenth Report on Reform of Judicial Administration* (1958).

⁶ NAT'L POLICE COMM'N, *Fourth Report* (GOV'T OF INDIA 1980).

⁷ LAW COMM'N OF INDIA, *One Hundred Fifty-Fourth Report on the Code of Criminal Procedure, 1973* (1996).

⁸ MINISTRY OF HOME AFFAIRS, *Report of the Committee on Reforms of Criminal Justice System* (2003) (Malimath Committee).

A structural blueprint emerged with the One Hundred Ninety-Eighth Report of the Law Commission (2006),⁹ titled *Witness Identity Protection and Witness Protection Programmes*. The report drew a conceptual distinction between two mechanisms.

- **Witness identity protection:** measures designed to conceal the identity of the witness, such as redaction, pseudonyms and in-camera proceedings, in order to protect the witness during the pre-trial and trial stages.
- **Witness protection programmes:** comprehensive, long-term packages of state assistance involving physical protection, safe houses, relocation and identity transformation in high-risk cases.

B. Judicial Perspectives and Comparative Legal Thought

Writing extrajudicially on access to justice and witness protection, Justice Madan B. Lokur has argued that access to justice remains illusory where key witnesses are exposed to external threats, and that the vulnerability of a witness compromises judicial neutrality directly. What is required on that view is a rights-based and institutionalised system supported by administrative and technological infrastructure.

In the comparative literature, Bhushan and Pranati (2007)¹⁰ analysed the structural differences between the Indian framework and the United States Federal Witness Security (WITSEC) Program. WITSEC operates as an independent and fully funded federal unit capable of providing complete identity change, new social security numbers and assistance with employment, whereas the Indian approach relied historically on discretionary police security. Dandurand and Farr (2010)¹¹ similarly emphasised that specialised protection units, independent of regular police station hierarchies, are essential to securing testimony in organised crime and political corruption cases.

C. Modern Legislative Reforms and Empirical Gaps

The approval of the Witness Protection Scheme, 2018 in *Mahender Chawla* introduced a national three-tiered threat perception scale, Categories A, B and C, together with district-level Competent Authorities headed by District and Sessions Judges. The enactment of the Bharatiya Nagarik Suraksha Sanhita, 2023, and in particular Section 398, converted that judicial mandate into a statutory requirement binding on every State.

⁹ LAW COMM'N OF INDIA, *One Hundred Ninety-Eighth Report on Witness Identity Protection and Witness Protection Programmes* (2006).

¹⁰ Tanuj Bhushan & S. Pranati, *Witness Protection in India and United States: A Comparative Analysis*, 2 INT'L J. CRIM. JUST. SCI. 1 (2007).

¹¹ Yvon Dandurand & Kristin Farr, *A Review of Selected Witness Protection Programs* (PUB. SAFETY CAN. 2010), Cat. No. PS4-96/2010E.

Recent empirical literature, notably Khan (2024),¹² identifies critical operational gaps.

- **Absence of statutory accountability:** existing frameworks do not hold law enforcement agencies to account where a protected witness is harmed or killed.¹³
- **Absence of daily subsistence support:** relocated witnesses frequently lack designated financial support for daily living expenses, which drives them back into high-risk environments.¹⁴
- **Absence of a job replacement framework:** without alternative employment, long-term relocation is financially unviable for economically vulnerable witnesses.¹⁵

V. RESEARCH METHODOLOGY

This study employs a non-empirical, analytical and normative socio-legal methodology, integrating doctrinal legal analysis with secondary empirical literature in order to evaluate the operationalisation of witness protection mechanisms.

A. Doctrinal Analysis

The doctrinal component involves a critical interpretation of primary statutory sources, landmark judicial decisions, statutory notifications and legislative debates. The key legal instruments examined are the following.

- Sections 398 and 530 of the Bharatiya Nagarik Suraksha Sanhita, 2023.
- The relevant procedural mechanisms under the Code of Criminal Procedure, 1973.
- The Witness Protection Scheme, 2018.
- The Guidelines for Recording of Evidence of Vulnerable Witnesses, 2024.

B. Comparative Legal Analysis

A comparative legislative analysis benchmarks the Indian framework against three international models.

- The United States Federal Witness Security (WITSEC) Program under the Witness Security Reform Act of 1984.
- The United Kingdom Protected Persons Service under Chapter 4 of Part 2 of the Serious Organised Crime and Police Act 2005.

¹² Mansoor Shoukat Khan, *Protection of Witnesses for Effective Administration of Criminal Justice in India: An Empirical Study of District Courts of Delhi* (2024) (Ph.D. thesis, JAMIA MILLIA ISLAMIA) (Shodhganga handle 10603/671720).

¹³ Khan, *supra* note 12.

¹⁴ Khan, *supra* note 12.

¹⁵ Khan, *supra* note 12.

- The Office for Witness Protection of South Africa under the Witness Protection Act 112 of 1998.

C. Secondary Data Audit and Jurisprudential Synthesis

The study synthesises judicial pronouncements, directions of the High Courts and the successive reform reports, namely the Fourteenth and the One Hundred Fifty-Fourth Reports of the Law Commission, the Fourth Report of the National Police Commission, the Malimath Committee Report and the One Hundred Ninety-Eighth Report of the Law Commission, into a single account of the field as it now stands.

VI. SIGNIFICANCE OF THE STUDY

- **Policy formulation:** the study provides an actionable blueprint for State Governments, and for Uttar Pradesh in particular, in framing the state-specific statutory schemes required by Section 398 of the Bharatiya Nagarik Suraksha Sanhita, 2023.
- **Institutional reform:** it identifies the need to decouple witness protection units from local police stations in order to prevent conflicts of interest in cases involving influential local actors.
- **Rights-based jurisprudence:** it strengthens the argument that witness protection is not a discretionary administrative privilege but an enforceable constitutional entitlement under Article 21.
- **Integration of technology:** it shows how digital testimonial tools such as live video links and voice distortion may be deployed under Section 530 of the Sanhita to protect the identity of a witness while preserving the fair trial rights of the accused.

VII. LIMITATION OF THE STUDY

- **Reliance on secondary material:** primary fieldwork, field surveys and direct empirical interviews fall outside this framework, which relies instead on judicial precedent, theoretical analysis and existing secondary literature.
- **An evolving statutory landscape:** because the Bharatiya Nagarik Suraksha Sanhita, 2023 is recent legislation, empirical data on state-by-state compliance with Section 398 remains limited.
- **Geographical focus:** while the conceptual legal analysis applies across India, the administrative and socio-legal evaluation focuses on Uttar Pradesh.

VIII. LEGAL ANALYSIS

A. Statutory Framework and Legislative Evolution

The evolution of witness protection in India began with judicial intervention in cases such as *Zahira Habibulla H. Sheikh* and *Mahender Chawla*, where the Supreme Court underlined that a fair trial is impossible without safeguarding witnesses from intimidation.

- **Judicial intervention:** in *Zahira Habibulla H. Sheikh* (the Best Bakery case) and in *Mahender Chawla*, the judiciary emphasised that fear of intimidation undermines a fair trial.
- **Witness Protection Scheme, 2018:** prompted by these directions, the Union Government framed the Witness Protection Scheme, 2018, which classifies threats into three levels, Category A (grave and life-threatening), Category B (moderate) and Category C (harassment), so that protective measures may be tailored to the risk.
- **Section 398 of the Sanhita:** the Bharatiya Nagarik Suraksha Sanhita, 2023 codified the framework in Section 398, giving statutory force to witness protection by obliging State Governments to prepare and notify state-level schemes.
- **Vulnerable Witness Guidelines, 2024:** model guidelines on Vulnerable Witness Deposition Centres and testimonial aids, prepared for the Vulnerable Witness Committee constituted by the Supreme Court and circulated to the High Courts, are directed at ensuring that child victims, survivors of sexual offences and intimidated witnesses can testify in a safe and non-threatening environment.

i. The Pre-2018 Regime: Fragmented Provisions

Before 2018, witness protection in India depended on isolated provisions scattered across procedural and substantive law.

- **Section 273 of the Code of Criminal Procedure, 1973:** required that evidence be taken in the presence of the accused, subject to limited exceptions, which exposed witnesses to direct visual intimidation.¹⁶
- **Section 327 of the Code:** conferred a discretion on trial courts to hold in-camera proceedings, exercised principally in sexual offence cases.¹⁷
- **Special statutes:** the Protection of Children from Sexual Offences Act, 2012 and the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989

¹⁶ Code of Criminal Procedure, 1973, No. 2 of 1974, s. 273.

¹⁷ Code of Criminal Procedure, 1973, No. 2 of 1974, s. 327.

introduced localised safeguards, including the procedure of the Special Court and in-camera trial under Sections 33 and 37 of the former, the requirement in Section 36 that a child not see the accused while testifying, and the rights of victims and witnesses conferred by Section 15A of the latter.¹⁸ These provisions remained fragmented and established no unified national standard.

ii. The Witness Protection Scheme, 2018

Drafted by the Ministry of Home Affairs in consultation with the National Legal Services Authority and the Bureau of Police Research and Development, the 2018 Scheme established a standardised framework.¹⁹

The Scheme evaluates the risk faced by witnesses and their families during criminal proceedings through a three-tiered classification.

- **Category A** covers the most severe risk, where the threat extends to the life of the witness or of family members during investigation, trial or thereafter.
- **Category B** covers threats to the safety, reputation or property of the witness or of family members.
- **Category C** covers harassment, intimidation or coercion intended to prevent the witness from giving free and truthful testimony.

To administer protection at these levels, the Scheme establishes a Competent Authority in each district. It is a tripartite body comprising the District and Sessions Judge as Chairperson, the Head of Police in the district as Member and the Head of Prosecution in the district as Member Secretary.

Once an application for protection is received, the decision rests on a mandatory Threat Analysis Report. The report is called for from, and prepared by, the Assistant Commissioner of Police or the Deputy Superintendent of Police in charge of the police sub-division concerned, on an order passed by the Competent Authority through its Member Secretary. The officer must conduct an impartial risk assessment, and the report must reach the Competent Authority within five working days of receipt of the order. It forms the basis on which protective measures are granted.

¹⁸ Protection of Children from Sexual Offences Act, 2012, No. 32 of 2012, ss. 33, 36, 37; Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, No. 33 of 1989, s. 15A (inserted by Act 1 of 2016, w.e.f. Jan. 26, 2016).

¹⁹ MINISTRY OF HOME AFFAIRS, *Witness Protection Scheme*, 2018, cll. 2, 3, 7, approved in *Mahender Chawla*, *supra* note 3.

- **Witness Protection Fund:** the Scheme requires State Governments to establish dedicated funds to meet the cost of protection, security installations and relocation.

iii. Section 398 of the Bharatiya Nagarik Suraksha Sanhita, 2023

Section 398 transformed witness protection from a judicially mandated framework into a statutory obligation. It provides:

Every State Government shall prepare and notify a Witness Protection Scheme for the State with a view to ensure protection of the witnesses.²⁰

Codification produces several consequences.

- **Statutory duty:** State Governments must formally notify and update witness protection schemes, and non-compliance becomes amenable to judicial review.
- **Integration with electronic testimony:** read with Section 530 of the Sanhita, which permits trials, inquiries and proceedings, including the recording of evidence, to be conducted in electronic mode, the provision allows witnesses to depose remotely over secure audio-video links from designated Vulnerable Witness Deposition Centres, avoiding the risks of direct attendance in court.²¹
- **Recognised entitlement:** protection is raised from a discretionary administrative privilege to a statutory entitlement serving the fair trial guarantee under Article 21.

iv. The Guidelines for Recording of Evidence of Vulnerable Witnesses, 2024

The Guidelines for Recording of Evidence of Vulnerable Witnesses, 2024 are model guidelines prepared by the Vulnerable Witness Committee chaired by Justice (Retd.) Gita Mittal, which the Supreme Court constituted by its order of 11 January 2022 in *Smruti Tukaram Badade v. State of Maharashtra*. They were amended in 2024 to align with the Bharatiya Nyaya Sanhita, 2023, the Bharatiya Nagarik Suraksha Sanhita, 2023 and the Bharatiya Sakshya Adhiniyam, 2023, and were circulated to all the High Courts for adoption.²² As and when a High Court notifies them, they govern the recording of the evidence of vulnerable witnesses in the district courts of that state.

- **Definition of a vulnerable witness:** clause 3(a) covers child victims and witnesses below the age of eighteen; victims under the Protection of Children from Sexual Offences Act, 2012; victims of the offences specified in Sections 64(1), 64(2), 65(2),

²⁰ Bharatiya Nagarik Suraksha Sanhita, 2023, No. 46 of 2023, s. 398.

²¹ Bharatiya Nagarik Suraksha Sanhita, 2023, No. 46 of 2023, s. 530.

²² *Guidelines for Recording of Evidence of Vulnerable Witnesses, 2024* (Vulnerable Witness Committee constituted by the Supreme Court of India by order dated Jan. 11, 2022 in *Smruti Tukaram Badade v. State of Maharashtra*).

66, 67, 68, 70, 71, 74, 75, 76, 77 and 78 of the Bharatiya Nyaya Sanhita, 2023; persons with disability within Section 2(s) of the Rights of Persons with Disabilities Act, 2016 where the court so considers; witnesses with mental illness within Section 2(s) of the Mental Healthcare Act, 2017 read with Section 124 of the Bharatiya Sakshya Adhiniyam, 2023; any witness deemed to face a threat perception under the Witness Protection Scheme, 2018; and any other witness whom the court considers vulnerable.²³

- **Vulnerable Witness Deposition Centres:** the direction to establish deposition centres in all district courts comes from the Supreme Court in *Mahender Chawla* and in *Smruti Tukaram Badade*,²⁴ and the Guidelines supply the protocol to be followed within them. The testimonial aids they contemplate include screens, single visibility mirrors, curtains, live links and image or voice altering devices, alongside separate waiting rooms and safe routes of entry and exit.²⁵
- **Support persons:** the Guidelines authorise the appointment of trained support persons, such as psychologists, social workers or legal aid volunteers, to assist vulnerable witnesses through pre-trial preparation and deposition.²⁶

B. Detailed Jurisprudential and Case Law Analysis

The evolution of witness protection jurisprudence in India reflects a transition from passive procedural convenience to an active constitutional requirement tied to the right to a fair trial under Article 21.

i. *Gudikanti Narasimhulu v. Public Prosecutor, High Court of Andhra Pradesh*

Legal principle: bail jurisprudence and protection against the tampering of witnesses.

Analysis: Krishna Iyer J. observed that the object of criminal justice is compromised where the accused uses pre-trial liberty to intimidate witnesses. The Supreme Court held that a reasonable apprehension of witness intimidation or of tampering with evidence is a valid ground for refusing or revoking bail, and the decision laid the groundwork for linking witness safety to the conditions of bail.²⁷

²³ *Id.* cl. 3(a).

²⁴ *Mahender Chawla*, *supra* note 3; *Smruti Tukaram Badade v. State of Maharashtra* (S.C. India, order of Jan. 11, 2022).

²⁵ *Guidelines for Recording of Evidence of Vulnerable Witnesses*, 2024, *supra* note 22, cl. 3(k).

²⁶ *Guidelines for Recording of Evidence of Vulnerable Witnesses*, 2024, *supra* note 22.

²⁷ *Gudikanti Narasimhulu v. Pub. Prosecutor, High Court of A.P.*, (1978) 1 S.C.C. 240 (S.C. India).

ii. *State (Delhi Administration) v. Sanjay Gandhi*

Legal principle: cancellation of bail for systematic coercion of witnesses.

Analysis: The Supreme Court held that bail may be cancelled where the prosecution establishes, on a balance of probabilities, that the accused is abusing liberty to tamper with prosecution witnesses. The Court recognised that the coercion of witnesses often operates through political and financial leverage rather than overt violence, which makes judicial intervention necessary to protect the integrity of the trial.²⁸

iii. *Dolat Ram v. State of Haryana*

Legal principle: the evidentiary threshold for cancellation of bail on the ground of threats to witnesses.

Analysis: The Court distinguished the considerations that justify refusal of bail from those that justify its cancellation. Once bail has been granted, cancellation requires clear and cogent evidence that the accused has actively interfered with the administration of justice by threatening witnesses or fabricating evidence. That standard argues for reliance on a documented threat assessment rather than on unverified oral allegation.²⁹

iv. *Zahira Habibulla H. Sheikh v. State of Gujarat (the Best Bakery Case)*

Legal principle: witness protection as a component of the right to a fair trial under Article 21.

Analysis: The case arose from the communal riots in Gujarat in 2002, where key prosecution witnesses turned hostile after coercion and threats to life, and the Supreme Court ordered a retrial outside the State of Gujarat. The Court observed:³⁰

If the witnesses get threatened or are forced to give false evidence that also would not result in a fair trial. ... It is one of the salutary principles of the administration of justice that justice should not only be done but it should be seen to be done.³¹

The Court criticised the trial court for having appeared to be a silent spectator, mute to the manipulations and indifferent to the sacrilege, and affirmed that a fair trial requires the protection both of the rights of the accused and of the safety of victims and witnesses. Adopting the description used by Bentham, the judgment treated witnesses as the eyes and ears of justice.³²

²⁸ *State (Delhi Admin.) v. Sanjay Gandhi*, (1978) 2 S.C.C. 411.

²⁹ *Dolat Ram v. State of Haryana*, (1995) 1 S.C.C. 349.

³⁰ *Zahira Habibulla H. Sheikh v. State of Gujarat*, (2004) 4 S.C.C. 158, AIR 2004 SC 3114.

³¹ *Zahira Habibulla H. Sheikh*, *supra* note 30.

³² *Id.*

v. National Human Rights Commission v. State of Gujarat

Legal principle: insulating decisions on witness protection from the local police in high-risk trials.

Analysis: Recognising that local police forces may come under pressure during communal or political conflict, the Supreme Court routed witness protection in the Gujarat riot trials through the Special Investigation Team. The Team was made the nodal agency to decide which witnesses require protection, and its Chairman was empowered, in appropriate cases, to decide which witnesses require the security of the paramilitary forces, such security to be made available upon his request. The order shows that where local police structures may be compromised, the decision on protection is better removed from them.³³

vi. Mahender Chawla v. Union of India

Legal principle: binding adoption of the Witness Protection Scheme, 2018.

Analysis: The petition was filed by witnesses and by family members of victims in prosecutions against influential religious figures, and it placed before the Court severe threats to witnesses, including the killing of witnesses. Exercising its powers under Articles 141 and 142 of the Constitution, the Supreme Court approved the Witness Protection Scheme, 2018 and directed all States and Union Territories to implement it until legislation was enacted. The Court held that the right of a witness to depose without fear is an extension of Article 21.³⁴

vii. Hari v. State of U.P.

Legal principle: the duty of the State to prevent witness hostility within regional power structures.

Analysis: Dealing with criminal trials in rural Uttar Pradesh, the Supreme Court observed that witnesses often turn hostile not out of choice but because of economic dependence, physical vulnerability and the failure of the State to provide timely security. The Court observed that trial judges must not remain passive recorders of evidence where witnesses resile under evident coercion, which reinforces the duty of the State to deploy protective measures under the 2018 Scheme.³⁵

viii. Ms. P v. State of Madhya Pradesh

Legal principle: cancellation of bail where the complainant is intimidated after release.

³³ *Nat'l Human Rights Comm'n v. State of Gujarat*, (2009) 6 S.C.C. 342.

³⁴ *Mahender Chawla*, *supra* note 3.

³⁵ *Hari*, *supra* note 4.

Analysis: The appeal was brought by the complainant in a prosecution for sexual assault against an unreasoned order granting bail. The Supreme Court set the order aside because the High Court had left out of account both the antecedents of the accused and his conduct after release, which included the intimidation of the complainant through social media posts and hoardings. The decision confirms that intimidation carried on publicly and online, and not only by direct threat, is a ground for cancellation of bail.³⁶

ix. *Munilakshmi v. Narendra Babu*

Legal principle: the judicial response where witnesses turn hostile after the accused is released on bail.

Analysis: The Supreme Court cancelled bail granted by the High Court in a prosecution for murder after family members of the deceased, who were prosecution witnesses, turned hostile within days of their examination. The Court recalled three witnesses for re-examination, directed police protection for the family and ordered an inquiry into whether they had been threatened. The decision shows that where hostility follows closely upon release, the remedial response extends to the recall of witnesses, to protection and to investigation of the cause of the hostility, rather than to the mere recording of resiled testimony.³⁷

C. Comparative Analysis of International Witness Protection Models

i. United States: The Federal WITSEC Model

In the United States, witness protection is governed principally by the Witness Security Reform Act of 1984, which established the federal WITSEC programme.³⁸ Its central structural feature is management by an independent federal agency, the United States Marshals Service, which operates separately from local police departments and from investigating agencies. The hallmark of the framework is comprehensive identity transformation and permanent relocation, providing witnesses with new legal identities, social security numbers, housing and long-term assistance with employment. So far as adaptability to India, and to state jurisdictions such as Uttar Pradesh, is concerned, complete identity change and relocation carry prohibitive financial cost, but the independent agency mechanism offers a valuable blueprint for eliminating local police interference and conflict of interest in sensitive trials.

³⁶ *Ms. P v. State of Madhya Pradesh*, Crim. App. No. 740 of 2022 (S.C. India, decided May 5, 2022), 2022 LiveLaw (SC) 448.

³⁷ *Munilakshmi v. Narendra Babu*, 2023 SCC OnLine SC 1348, 2023 INSC 943 (Crim. App. No. 3297 of 2023, decided Oct. 20, 2023).

³⁸ Witness Security Reform Act of 1984, Pub. L. No. 98-473, tit. II, ch. XII, 98 Stat. 2153 (codified at 18 U.S.C. ss. 3521-3528).

ii. United Kingdom: Structural Independence and Testimonial Safeguards

The witness protection arrangements of the United Kingdom rest on Chapter 4 of Part 2 of the Serious Organised Crime and Police Act 2005, which places the protection of persons involved in investigations and proceedings on a statutory footing.³⁹ Protection is delivered through the United Kingdom Protected Persons Service, which is provided regionally by police forces and coordinated nationally by the National Crime Agency, and which operates independently of the officers conducting the trial. Rather than relying solely on a full change of identity, the framework emphasises secure relocation, the use of pseudonyms and testimonial aids such as live-link testimony in court. The model is adaptable to the Indian and the Uttar Pradesh contexts because it supplies a standardised and structurally independent framework for threat analysis and procedural safeguards that can be integrated directly into Vulnerable Witness Deposition Centres without requiring a total overhaul of identity.

iii. South Africa: Protection in Socio-Economically Diverse Contexts

South Africa established its statutory framework under the Witness Protection Act 112 of 1998, which created the Office for Witness Protection as an autonomous unit within the National Prosecuting Authority.⁴⁰ Its operational focus lies on temporary or permanent relocation, subsistence support and specialised safe houses for witnesses facing high levels of intimidation. The model is adaptable to developing jurisdictions such as Uttar Pradesh because it was engineered for a high-crime and socio-economically diverse environment. It offers a practical matrix for combining direct economic assistance and temporary safe housing with witness safety, and it is a realistic template for implementation at the state level in India.

IX. FINDINGS

The following conclusions are drawn from the doctrinal and comparative material examined above rather than from fieldwork.

- **Information asymmetry at the pre-trial stage:** neither the Witness Protection Scheme, 2018 nor Section 398 of the Bharatiya Nagarik Suraksha Sanhita, 2023 obliges an investigating officer or a public prosecutor to inform a witness of the available protections when a statement is recorded under Section 180 of the Sanhita, which replaces Section 161 of the Code of Criminal Procedure, 1973.⁴¹

³⁹ Serious Organised Crime and Police Act 2005, c. 15, ss. 82-94, sch. 5 (UK) (ch. 4 of pt. 2 in force Apr. 1, 2006).

⁴⁰ Witness Protection Act 112 of 1998 (S. Afr.).

⁴¹ Bharatiya Nagarik Suraksha Sanhita, 2023, No. 46 of 2023, s. 180; Code of Criminal Procedure, 1973, No. 2 of 1974, s. 161.

- **Structural conflict of interest in local police deployment:** assigning witness security to local police stations creates a conflict of interest where the threat emanates from politically connected local actors or from local police personnel.
- **Underuse of the State Witness Protection Funds:** no utilisation figures for the dedicated Witness Protection Funds are placed in the public domain, and on the material available the funds appear to remain substantially undrawn in states such as Uttar Pradesh, which leaves Category A measures such as long-term relocation, housing support and daily living stipends largely non-operational.
- **Exclusion of non-heinous crimes:** threat assessment in practice gravitates towards offences punishable with death or imprisonment for life, leaving witnesses in localised land, caste and communal disputes exposed to retaliation.
- **Absence of enforcement accountability:** neither the Scheme nor Section 398 provides statutory penalties or disciplinary consequences where a protecting authority fails to execute a protection order made by a court.

X. SUGGESTIONS

- **An independent State Witness Protection Cell:** Uttar Pradesh should establish a State Witness Protection Cell under the Department of Home, separate from station-level police hierarchies and staffed by officers under the direct supervision of the Indian Police Service, to conduct independent Threat Analysis Reports.
- **Integration of digital and testimonial safeguards:** Vulnerable Witness Deposition Centres should be extended to sub-divisional courts and connected to the District Courts by encrypted video-conferencing networks under Section 530 of the Sanhita, with real-time voice altering and image masking technology.
- **A mandatory duty to inform:** investigating officers should be required to attach a standardised, multilingual notice of witness rights to every summons issued under Section 180 of the Sanhita, and prosecutors should be required to certify to the court that the witness has been informed of the available protections.
- **Socio-economic support and relocation stipends:** state schemes should be amended to guarantee monthly living stipends, housing assistance and vocational placement, delivered through the State Legal Services Authority, for witnesses required to relocate under Category A.
- **Penalties for enforcement negligence:** procedural guidelines should provide that failure by a protecting authority to execute a judicial protection order within twenty-

four hours amounts to administrative misconduct, and that the deadline for the Threat Analysis Report is reduced from five working days to seventy-two hours in high-risk Category A cases.

XI. CONCLUSION

The evolution of witness protection in India, from scattered statutory provisions to binding directions of the Supreme Court in *Mahender Chawla*, and then to a statutory duty under Section 398 of the Bharatiya Nagarik Suraksha Sanhita, 2023, represents a substantial shift in Indian criminal jurisprudence. By recognising that a fair trial cannot exist where witnesses face violence or coercion, the legal system has affirmed the safety of witnesses as a component of Article 21.

Statutory recognition alone does not secure protection. In Uttar Pradesh, operationalising Section 398 requires resolving structural conflicts of interest in local police deployment, funding the witness protection accounts, providing economic support to relocated witnesses and enforcing administrative accountability. By establishing independent witness protection units, using modern testimonial technology and closing the pre-trial information gap, the State can build a judicial ecosystem that protects witnesses, reduces forced hostility and upholds the rule of law.
