

Witness Protection in India: A Mixed-Method Empirical and Comparative Analysis with Special Reference to the Post-2023 Criminal Law Reforms

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Abstract:

India occupies a unique and troubling paradox in the global common law world. It is the world's largest democracy, home to a constitutionally entrenched adversarial criminal justice system with an independent judiciary, a vibrant legal profession, and a Supreme Court that has over decades expanded the scope of fundamental rights in ways that are the envy of the developing world. Yet India remains, as of 2025, one of the very few major common law jurisdictions without a standalone parliamentary statute dedicated to the protection of witnesses in criminal proceedings. This absence is not merely a legislative oversight, it is, as this paper empirically demonstrates, a structural failure with measurable, quantifiable consequences for the administration of criminal justice in India. This paper undertakes a comprehensive mixed-method empirical and comparative legal analysis of witness protection in India, set against the backdrop of the most ambitious criminal law reform India has undertaken since independence: the replacement of the Indian Penal Code, 1860 by the Bharatiya Nyaya Sanhita, 2023 (BNS); the Code of Criminal Procedure, 1973 by the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS); and the Indian Evidence Act, 1872 by the Bharatiya Sakshya Adhiniyam, 2023 (BSA). These three statutes represent a fundamental reimagining of Indian criminal law. And yet, astonishingly, none of them contains a dedicated witness protection provision, and none codifies or supersedes the Witness Protection Scheme, 2018 (WPS 2018)- the only instrument that presently governs witness protection in India, and which itself is merely an administrative scheme approved by the Supreme Court rather than an Act of Parliament. The paper draws on three interconnected empirical methodologies: first, a quantitative analysis of conviction rate data from the National Crime Records Bureau (NCRB) Crime in India Reports spanning 2018 to 2023, which reveals a consistent and statistically significant underperformance in conviction rates across precisely those categories of offences, organised crime, terrorism, sexual violence, communal violence, and corruption, where witness intimidation is most prevalent; second, a case-based empirical analysis of high-profile hostile witness incidents drawn from reported Supreme Court and High Court decisions and corroborated institutional sources, including the Best Bakery case, the Sohrabuddin Sheikh encounter case, and the 2008 Malegaon blast trial; and third, a systematic nine-dimensional comparative benchmarking of the WPS 2018 against the statutory witness protection regimes of the United States (18 U.S.C. sections 3521 to 3528 the WITSEC programme), the United Kingdom (Youth Justice and Criminal Evidence Act 1999, Serious Organised Crime and Police Act 2005, and the Coroners and Justice Act 2009), and Australia (Witness Protection Act 1994, Cth). The paper establishes three central findings. First, the hostile witness phenomenon in India is not anecdotal it is empirically verifiable, structurally predictable, and causally linked to the absence of enforceable statutory protection. Second, the WPS 2018, while representing a necessary and commendable administrative step, suffers from five deep structural deficiencies, the absence of an enforceable legal right to protection, an independent institutional authority, dedicated statutory funding, an operational identity-change mechanism, and uniform national implementation standards, and the 2023 reforms have done nothing to cure any of these deficiencies. Third, the three comparator jurisdictions offer specific, constitutionally compatible, and legally adaptable legislative mechanisms that can be transposed into the Indian framework to address each identified deficiency. The paper concludes by proposing a detailed legislative roadmap for a dedicated Witness Protection and Anonymity Act for India, built around six structural pillars: a National Witness Protection Authority; a three-condition anonymity test; a National Witness Protection Fund; an inter-agency identity document framework; a hearsay exception for witnesses in fear; and criminal sanctions for unauthorised disclosure. The paper argues that such legislation is not merely a matter of policy preference but a constitutional necessity under Article 21 of the Constitution of India, an international legal obligation under the

United Nations Convention against Transnational Organized Crime (UNTOC) and the International Covenant on Civil and Political Rights (ICCPR), and an institutional imperative for the credibility of India's criminal justice system.

Keywords: Witness protection, hostile witness, Witness Protection Scheme 2018, Bharatiya Nagarik Suraksha Sanhita 2023, comparative criminal law, WITSEC, witness anonymity, Article 21, criminal justice reform, NCRB data, hostile witness, forfeiture by wrongdoing, Law Commission of India

1. Introduction

1.1 The Problem: Witnesses as the Lifeblood of Criminal Justice

In the architecture of an adversarial criminal justice system, the witness occupies a position of irreplaceable centrality. Unlike inquisitorial systems where the judge actively investigates and builds the case file, the adversarial model, which India has inherited from the English common law tradition, depends upon the oral testimony of witnesses as the primary vehicle through which facts are placed before the court, tested through cross-examination, and ultimately weighed by the fact-finder. Jeremy Bentham, writing in the early nineteenth century, described witnesses as the '*eyes and ears of justice*'- a metaphor that has lost none of its force in the twenty-first century. If witnesses are the eyes and ears of justice, then a system that fails to protect witnesses from intimidation, coercion, and harm is, in effect, blinding and deafening itself by institutional neglect.

The consequences of this neglect in India are not abstract or theoretical. They manifest in concrete and measurable ways: in the acquittal of accused persons in terrorism and organised crime trials where key prosecution witnesses have turned hostile; in the exoneration of powerful individuals in corruption and fake encounter cases where the entire edifice of the prosecution's evidence has collapsed because witnesses, once willing to testify, have recanted their statements before the court; and in the underreporting of crimes, particularly sexual violence and crimes against marginalised communities, by victims who have no confidence that the State will protect them from retaliation if they testify. These are not failures of judicial reasoning or investigative incompetence alone, they are, at least in significant part, failures of witness protection.

India's witness protection landscape, as of 2025, is defined by a single instrument: the Witness Protection Scheme, 2018 (WPS 2018), approved by the Supreme Court of India in *Mahender Chawla v. Union of India*, (2019) 14 SCC 615. The WPS 2018 represents a genuine and important institutional advance, it provides a framework for threat assessment, categorisation of witnesses, and a range of protection measures from police escort and safe houses to, in extreme cases, identity change. But it is not an Act of Parliament. It creates no statutory rights. It imposes no mandatory duties on the State. And, as the empirical record demonstrates with uncomfortable clarity, it has remained largely unimplemented across most States of India in the seven years since its introduction.

1.2 The 2023 Reforms: A Missed Opportunity

Against this background, the criminal law reforms of 2023 represented an extraordinary opportunity. The replacement of three foundational statutes the Indian Penal Code, 1860 (by the Bharatiya Nyaya Sanhita, 2023), the Code of Criminal Procedure, 1973 (by the Bharatiya Nagarik Suraksha Sanhita, 2023), and the Indian Evidence Act, 1872 (by the Bharatiya Sakshya Adhinyam, 2023) was presented by the Government of India as a transformative reimagining of the criminal justice system, aimed at making it more efficient, more accessible, and more attuned to the needs of victims and witnesses. The BNSS, in particular, introduced several progressive provisions: Section 530 provides for video-link testimony; Section 536 permits in-camera proceedings in sensitive cases; and various provisions seek to improve trial timelines and reduce adjournments.

Yet the 2023 reforms are conspicuously and inexplicably silent on witness protection. Not one of the three new statutes contains a dedicated chapter on witness protection. Not one codifies the WPS 2018 into statutory form. Not one establishes an independent authority to oversee witness protection. Not one creates a statutory fund for this purpose. The BNSS's video-link provision (s. 530) and in-camera provision (s. 536) are procedural accommodations for vulnerable witnesses, they are not witness protection in any meaningful sense. A witness who fears for her life does not need the comfort of testifying via video link; she needs the assurance that the State will protect her from violence before, during, and after the trial. The 2023 reforms do not provide that assurance.

This paper argues that the omission of witness protection from the 2023 reforms was not only a policy failure but a constitutional one. The right to life and personal liberty guaranteed under Article 21 of the Constitution of India has been interpreted by the Supreme Court to encompass within it the right to a fair and effective criminal justice system, which necessarily includes the protection of witnesses who are essential to that system's functioning. The failure to enact statutory witness protection legislation also places India in breach of its international treaty obligations under UNTOC Article 24 and ICCPR Article 14.

1.3 Significance of the Study

The study is significant for four reasons. First, it addresses a genuine and unresolved lacuna in Indian criminal law scholarship- the existing literature on witness protection in India is largely descriptive and doctrinal; this paper adds an empirical and comparative dimension that is presently absent. Second, it is timed at a moment of maximum policy relevance, the 2023 criminal law reforms have just been enacted, and the question of what they have omitted is one that lawmakers, the Law Commission, and the Supreme Court will need to grapple with in the coming years. Third, it offers a concrete and detailed legislative roadmap, not merely a critique of what is wrong. Fourth, it draws on a breadth of comparative material, US, UK, and Australian law, that is rarely synthesised in a single Indian law paper.

2. Historical Evolution of Witness Protection Law in India

2.1 The Colonial Era: Evidence Law Without Witness Protection

The foundations of India's evidence law were laid in the colonial period with the enactment of the Indian Evidence Act, 1872, drafted by Sir James Fitzjames Stephen. The Act was a masterpiece of legal codification- comprehensive, technically precise, and remarkably durable, surviving in substantially its original form until its replacement by the Bharatiya Sakshya Adhiniyam, 2023. However, the 1872 Act approached the law of evidence from the perspective of the court and the litigant, not from the perspective of the witness as a participant in the justice process with rights and vulnerabilities of their own. Provisions such as Section 154 (permitting the court to allow a party to cross-examine their own witness who turned hostile) were remedial responses to the fact of witness hostility, not preventive measures against it. The colonial legislative framework took witnesses for granted, it assumed their availability and willingness to testify, and provided mechanisms to deal with their unreliability, but gave no thought to the question of why witnesses might become unreliable and what the State might do to prevent it.

The Code of Criminal Procedure, 1898 (replaced by the CrPC 1973) similarly contained no witness protection provisions. Witnesses were summoned, examined, and dismissed, instruments of the judicial process rather than participants deserving of institutional solicitude. The adversarial model as transplanted to India from England operated on the implicit assumption that witnesses would be willing to tell the truth in court, that the institutional authority of the court would ensure their safety within the courtroom, and that the social and legal consequences of perjury would deter departure from truthful testimony. These assumptions, always somewhat optimistic in England, proved catastrophically ill-suited to the Indian social, political, and institutional context.

2.2 Post-Independence Developments: Judicial Recognition Without Legislative Action

In the decades following independence, the hostile witness problem emerged as a recurring and increasingly prominent concern in Indian criminal jurisprudence. The Supreme Court recognised as early as the 1980s that witness intimidation was undermining the effectiveness of criminal prosecutions in organised crime and politically sensitive cases. However, the judicial response was primarily reactive, courts developed doctrines to deal with hostile witnesses after the fact, such as the rule permitting extensive cross-examination of hostile witnesses by the party calling them, rather than proactively developing a framework for witness protection.

The landmark case of *Zahira Habibullah H. Sheikh v. State of Gujarat*, (2004) 4 SCC 158, the Best Bakery case, marked a turning point. Arising from the communal violence of 2002 in Gujarat, the case saw multiple prosecution witnesses retract statements they had given to the police, leading to the acquittal of the accused in the trial court. The Supreme Court's intervention, finding that the trial had been a mockery of justice and ordering a retrial, was path-breaking. More significantly, the Court explicitly identified the absence of witness protection as a systemic

failure, stating that the State had an obligation under Article 21 to ensure that witnesses were not subjected to intimidation and were able to testify freely. *Zahira Habibullah* is thus the foundational constitutional text for the proposition that witness protection is not merely a policy matter but a constitutional imperative.

The case of *Neelam Katara v. Union of India*, (2003) 4 SCC 588, in which the mother of a murder victim sought protection for witnesses in a trial involving powerful accused persons, further underscored the judicial awareness of the legislative vacuum. The Supreme Court issued interim protection orders but was compelled to note that in the absence of any statutory framework, the Court was effectively performing a legislative function- an unsatisfactory state of affairs in a constitutional democracy.

2.3 The Law Commission's 198th Report (2006): The Blueprint Ignored

The Law Commission of India's 198th Report, submitted in 2006, represented the most comprehensive official analysis of witness protection in Indian legal history. The Commission surveyed witness protection regimes in the United States, United Kingdom, Canada, and South Africa; analysed conviction rate data and judicial records on the hostile witness phenomenon; and proposed a detailed draft Witness Identity Protection and Witness Protection Bill, 2006. The draft Bill proposed the establishment of State Witness Protection Authorities, a Witness Protection Fund, provisions for identity protection, relocation, and anonymity orders, and criminal sanctions for intimidation and disclosure of witness identity.

The 198th Report's draft Bill has never been enacted. It was not taken up by the UPA government that was in power when the Report was submitted, nor by any subsequent government. It was not considered when the Criminal Law Amendment Act, 2013 was enacted in the aftermath of the December 2012 gang rape case, despite the obvious relevance of witness protection to sexual violence trials. And it was not considered when the 2023 criminal law reforms were drafted. The fate of the 198th Report is, in itself, a powerful illustration of the legislative culture that has allowed the witness protection gap to persist- official acknowledgment of the problem, earnest proposals for its solution, and then institutional inaction.

2.4 The WPS 2018 and Mahender Chawla: A Judicial Substitute for Legislation

Frustrated by the legislature's persistent failure to act, the Supreme Court took the unusual step in *Mahender Chawla v. Union of India*, (2019) 14 SCC 615, of approving the Witness Protection Scheme, 2018, a scheme prepared by the Ministry of Home Affairs, as a binding legal instrument under Articles 141 and 142 of the Constitution. The Court held that the Scheme would be binding on all States and Union Territories until Parliament enacted appropriate legislation. The Court simultaneously directed Parliament to enact comprehensive witness protection legislation.

The *Mahender Chawla* judgment is significant for two reasons. First, it gave the WPS 2018 a constitutional imprimatur that elevates it above a mere executive circular, by virtue of the Court's direction under Article 141, the Scheme has the force of law and is binding on courts throughout the territory of India. Second, the Court's direction to Parliament to legislate is an extraordinary judicial instruction that Parliament has, as of 2025, failed to comply with, a failure that is itself constitutionally significant.

2.5 The 2023 Reforms: Continuity of the Gap

The enactment of the BNS, BNSS, and BSA in 2023 represented the largest reform of India's criminal law framework since independence. The BNSS, in particular, introduced significant procedural innovations: mandatory video-conferencing facilities in courts (s. 530), time-bound investigations and trials, enhanced provisions for victim compensation, and specific provisions for vulnerable witnesses in sensitive cases. The BSA introduced electronic documents and records as primary evidence and updated the framework for expert testimony.

However, a careful reading of all three statutes reveals that witness protection, as a standalone institutional framework, is entirely absent. The BNSS does not establish any Witness Protection Authority. It does not create a Witness Protection Fund. It does not provide for anonymity orders. It does not codify the WPS 2018. The BSA does not create a hearsay exception for witnesses who do not testify through fear. The BNS does not create a

specific offence of witness intimidation beyond the general provisions on criminal intimidation. The 2023 reforms have, in effect, preserved, and by their silence implicitly endorsed, the pre-existing legislative vacuum on witness protection.

3. Theoretical Framework

3.1 The Rights-Based Framework: Witness Protection as a Constitutional Imperative

The theoretical foundation of this paper is a rights-based framework that conceptualises witness protection not as a policy choice or an operational convenience for prosecutors, but as a fundamental constitutional and human rights obligation. This framework rests on three interconnected normative propositions.

The first proposition is that the right to life and personal liberty guaranteed under Article 21 of the Constitution of India encompasses within it the right of every citizen who is called upon to testify in criminal proceedings to be protected from threats, intimidation, and harm arising from that testimony. The Supreme Court's expansive interpretation of Article 21 - beginning with *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248, and continuing through *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, (1981) 1 SCC 608, to *Zahira Habibullah* (2004), supports the proposition that the State has a positive obligation under Article 21 not merely to refrain from violating citizens' rights but to take affirmative steps to protect those rights from violation by third parties. Where the State calls upon a citizen to discharge the civic duty of testifying in court, it assumes a correlative duty to ensure that the discharge of that duty does not expose the citizen to violence or harassment.

The second proposition draws from the theory of victim rights and restorative justice, which has increasingly influenced criminal law reform globally. The traditional adversarial model positions the witness including the victim-witness as a tool of the prosecution, not as a participant with independent rights in the criminal process. The emerging victim rights framework, reflected in instruments such as the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985) and the Rome Statute's provisions for victim participation, reconceptualises the witness as a rights-bearing participant whose security, dignity, and wellbeing impose obligations on the justice system. From this perspective, witness protection is not an optional luxury but a minimum standard of justice.

The third proposition draws from the rule of law tradition and the institutional theory of criminal justice. The rule of law requires not merely that laws be enacted but that they be effectively enforced. Effective enforcement of the criminal law depends upon the availability of witnesses willing and able to testify truthfully. A State that fails to protect its witnesses is, in effect, failing to enforce its criminal law and a criminal law that cannot be enforced is not law in any meaningful sense. Witness protection is thus not merely a matter of individual rights but of systemic institutional integrity.

3.2 Functional Comparative Law: The Zweigert and Kotz Framework

The comparative dimension of this paper is grounded in the functional comparative methodology developed by Zweigert and Kotz in their seminal work *An Introduction to Comparative Law* (3rd ed., 1998). The functional method asks not 'what does the law of country X say about institution Y?' but 'what social problem does institution Y seek to solve, and how effectively does country X's legal approach solve it?' This approach is particularly well-suited to the present analysis because witness protection serves a clearly identifiable social function, enabling the testimony of persons who fear retaliation that is common across all the jurisdictions under examination, even though the legal mechanisms through which that function is performed vary considerably.

The nine-dimensional analytical framework employed in the comparative analysis of Section 8 derives from the functional method: each dimension (constitutional basis, institutional architecture, forms of protection, procedure, fair trial safeguards, implementation and oversight, statutory funding, identity change mechanism, and adaptability to India) represents a functional category that captures a distinct aspect of how the witness protection system performs its social function. This framework allows for a structured, like-for-like comparison that goes beyond superficial description to evaluate the relative effectiveness of each jurisdiction's approach.

3.3 The Confrontation Right and the Limits of Anonymity: A Balancing Framework

Any theoretical framework for witness protection must grapple with the tension between the witness's right to protection and the accused's right to confront their accusers. In the Indian constitutional framework, this tension arises between the witness's right under Article 21 (life and personal liberty) and the accused's right to a fair trial, which the Supreme Court has also located within Article 21 as well as Article 14 (equality before law). In international human rights law, the same tension arises between the victim/witness's rights under Article 3 ECHR (freedom from torture and inhuman treatment) and the accused's right under Article 6(3)(d) ECHR (right to examine witnesses). The European Court of Human Rights has resolved this tension through what might be called the 'counterbalancing safeguards' doctrine, developed in *Doorson v. Netherlands*, (1996) 22 EHRR 330, and refined in *Al-Khawaja and Tahery v. United Kingdom*, [2011] ECHR 2127 (Grand Chamber): witness anonymity is permissible provided that the accused is afforded adequate counterbalancing measures to compensate for the disadvantage caused by the anonymity, and provided that the anonymous witness's evidence is not the sole or decisive basis for conviction. This paper adopts this proportionality-based balancing framework as the normative standard against which both the existing Indian framework and the proposed legislative roadmap are evaluated.

4. Research Methodology

4.1 Quantitative Analysis: NCRB Data

The quantitative strand draws on conviction rate data from the NCRB Crime in India Reports for the years 2018 to 2023, the complete post-WPS 2018 period for which data is available. The NCRB Reports are the authoritative official source of criminal justice statistics in India, compiled annually by the National Crime Records Bureau under the Ministry of Home Affairs. The analysis focuses on conviction rates across offence categories, State-level variation in conviction rates, and trends in crime registration and trial disposition rates. Where the NCRB data is supplemented by other official sources (Supreme Court orders, NHRC reports), this is explicitly noted.

The primary limitation of the quantitative analysis is that the NCRB does not publish a dedicated data series on 'hostile witness declarations', there is no official statistical category that tracks how many witnesses in criminal trials turned hostile, by whom, or with what consequence for the outcome of the trial. The hostile witness rates cited in Section 6 (60-70% in organised crime and terrorism cases) are derived from judicial pronouncements and legal scholarship, not from independently audited administrative data. This limitation is acknowledged throughout the analysis and constitutes, in itself, a finding, the absence of systematic data collection on hostile witnesses is a governance failure that a reformed legislative framework must address.

4.2 Case-Based Empirical Analysis

The case-based empirical strand involves detailed analysis of a purposively selected sample of high-profile cases in which the hostile witness phenomenon has been documented. Cases were selected on the basis of the following criteria: (a) the case involved charges of organised crime, terrorism, sexual violence, communal violence, or corruption; (b) the fact of hostile witnesses was documented in the reported judgment or in corroborated institutional sources (SC orders, NHRC reports, official CBI/NIA press releases); and (c) the case illustrates a distinct dimension of the hostile witness problem (e.g., State complicity, political pressure, organised criminal intimidation). The analysis of each case goes beyond the summary provided in tables to examine the facts, the judicial reasoning, and the systemic implications.

4.3 Functional Comparative Analysis

The comparative strand employs the Zweigert and Kotz functional method described in Section 4.2. Primary legislative sources, the US Organized Crime Control Act 1970 (18 U.S.C. Sec.Sec. 3521-3528), the UK's YJCEA 1999, SOCPA 2005, CJA 2009, and CJA 2003, and Australia's WPA 1994 (Cth), were analysed alongside secondary sources including DOJ publications, UK CPS guidance, and Australian AFP reports. The nine-dimensional framework was applied consistently across all four jurisdictions (including India) to enable structured comparison.

4.4 Data Sources

Category	Specific Sources
NCRB Statistical Data	Crime in India Reports, 2018-2023 (Ministry of Home Affairs, Government of India)
Supreme Court Judicial Records	Mahender Chawla (2019); Zahira Habibullah (2004); VWDC Orders 2022-2024
Official Commission Reports	Law Commission 198th Report (2006); NHRC Witness Protection Report (2019); Malimath Committee Report (2003)
Comparative Primary Legislation	18 U.S.C. Sec.Sec. 3521-3528; YJCEA 1999; SOCPA 2005; CJA 2009; CJA 2003; WPA 1994 (Cth)
Institutional Publications	US DOJ/USMS WITSEC publications; UK CPS Guidance (2022); Australian AFP Reports
Peer-Reviewed Literature	Tiwari (2015); Vashishtha (2020); Chatterjee (2024); Putt & Anderson (2022); Mirfield (2009)
International Instruments	UNTOC (2000, ratified India 2011); ICCPR (ratified India 1979); Rome Statute (1998)

5. Empirical Analysis: The Hostile Witness Phenomenon in India

5.1 Understanding the Hostile Witness: Definition and Legal Framework

Before presenting the empirical data, it is necessary to define precisely what is meant by a 'hostile witness' in the Indian legal context. Under Section 154 of the Indian Evidence Act, 1872 (now Section 141 of the Bharatiya Sakshya Adhiniyam, 2023), the court has the discretion to permit the party calling a witness to put leading questions to that witness- effectively to cross-examine their own witness, where the court considers it necessary to do so in the interests of justice. This permission is conventionally granted where the witness's testimony in court is inconsistent with, contradictory to, or materially different from the statement previously given to the police (recorded under Section 161 of the CrPC, now Section 180 of the BNSS) or in a deposition before a Magistrate. A witness in this position is colloquially- and in judicial usage- described as a 'hostile witness.'

It is important to note that under Indian evidence law, the mere declaration of a witness as hostile and the permission to cross-examine does not automatically render the witness's entire testimony unreliable or inadmissible. The Supreme Court has clarified, in cases such as *Bhagwan Singh v. State of Haryana*, (1976) 1 SCC 389, and *Rammi v. State of M.P.*, (1999) 8 SCC 649, that those parts of the hostile witness's testimony that are consistent with the prosecution case and reliable in themselves can still be relied upon by the court. However, in practice, a witness who turns hostile, particularly in a case where the witness was a key eyewitness or the complainant, often deals a fatal blow to the prosecution's case, because the credibility of the witness as a whole is undermined, and the court is reluctant to rely on selective portions of testimony that the witness themselves has repudiated.

The causes of hostile witness behaviour are multiple and not always attributable to external intimidation. Witnesses may turn hostile because: (a) they have been directly threatened or subjected to violence by the accused or associates; (b) they have accepted monetary inducements to retract their testimony; (c) they have reconciled with the accused (particularly in cases involving domestic or interpersonal violence); (d) they fear long-term social or professional consequences in small communities; (e) they have lost confidence in the ability of the justice system to protect them; or (f) they were never genuinely willing witnesses and gave their original statements under police pressure. The causal link between the absence of witness protection and hostile witness behaviour is most

direct in categories (a), (b), and (c) and it is these categories that are most prevalent in organised crime, terrorism, and State accountability cases.

5.2 Conviction Rate Analysis: NCRB Data 2018-2023

The NCRB Crime in India 2023 Report, the most recent available, reveals a national conviction rate of 54% for IPC offences. This headline figure, while an improvement over rates recorded in earlier decades, conceals dramatic divergences across offence categories and States that are directly relevant to the hostile witness analysis. The following table presents key data points from the NCRB Reports 2018-2023:

Offence Category / Indicator	NCRB Data / Finding	Year / Source
Overall IPC conviction rate (national average)	54%	NCRB 2023
Crimes against women, conviction rate	26.5%	NCRB 2021
Crimes against women, trial pendency rate	95%+	NCRB 2021
Cyber crime conviction rate (3-year average)	1.6% (2,706 of 1.67 lakh cases)	NCRB 2020-2022
Haryana: overall IPC conviction rate	30.9%	NCRB 2023
Odisha: crimes against women, conviction rate	8.3%	NCRB 2021
Odisha: crimes against women, pendency rate	98.6%	NCRB 2021
Total cognisable crimes registered (India)	6.24 million (up 7.2% from 2022)	NCRB 2023
POCSO, Karnataka conviction rate (2023)	531 convictions out of 3,408 cases disposed	NCRB / Deccan Herald 2025
UAPA cases, conviction rate (reported)	Significantly below IPC average; State-specific	NCRB / NIA Annual Reports

These figures require careful contextual analysis. The 54% national conviction rate for IPC offences is itself a fraction of the true picture, because the denominator, cases 'disposed' by courts, includes only those cases that have proceeded to trial and judgment; the vast majority of registered cases remain pending at various stages. The NCRB's own data reveals that the total number of cases pending trial in Indian courts has consistently exceeded several million, with pendency rates in specific offence categories (crimes against women: 95%+; Odisha: 98.6%) that effectively mean that justice is indefinitely deferred for the vast majority of victims.

The 26.5% conviction rate for crimes against women, which includes rape, sexual harassment, and domestic violence, is particularly significant. The Law Commission's 198th Report and subsequent scholarship have consistently identified witness intimidation, particularly the intimidation of victim-witnesses, as a major contributing factor to the low conviction rates in sexual violence cases. Where the complainant is also the primary witness, and where the accused has the means and incentive to intimidate the complainant into retracting her testimony, the absence of witness protection effectively immunises powerful accused persons from accountability. The NCRB data is consistent with this analysis, though it does not in itself establish causation.

5.3 Detailed Case Analysis: The Hostile Witness Phenomenon at Scale

5.3.1 Zahira Habibullah H. Sheikh v. State of Gujarat (Best Bakery Case)

The Best Bakery case, *Zahira Habibullah H. Sheikh v. State of Gujarat*, (2004) 4 SCC 158, is the foundational case in the Indian judicial canon on witness protection and the hostile witness phenomenon. The case arose from the burning of the Best Bakery in Vadodara, Gujarat, on 1 March 2002, during the post-Godhra communal riots, in which fourteen people were killed. Zahira Sheikh, the principal complainant and eyewitness, initially identified the accused to the police and before the trial court. However, by the time the trial commenced before the Fast Track Court in Vadodara, Zahira and other prosecution witnesses had retracted their earlier statements and testified that they had not seen who had attacked the bakery.

The Fast Track Court acquitted all twenty-one accused on the basis of this wholesale retraction of prosecution testimony. The National Human Rights Commission and NGO 'Citizens for Justice and Peace' approached the Supreme Court, which examined the matter and reached a devastating conclusion: that Zahira and the other witnesses had been intimidated into retracting their testimony, and that the trial had been a 'mockery of justice.' The Supreme Court ordered a retrial in Maharashtra, and in the retrial, Zahira again turned hostile- only to eventually admit in proceedings before the Supreme Court that she had been intimidated and induced by the accused to change her testimony. She was ultimately convicted of contempt of court for her false testimony before the Supreme Court.

The Best Bakery case is instructive for several reasons. First, it demonstrates that the hostile witness phenomenon is not limited to individual cases of personal intimidation but can be a systematic, organised effort to subvert the justice process in politically sensitive cases. Second, it shows that even the Supreme Court's direct intervention, retrial orders, contempt proceedings, and close monitoring, is insufficient to protect witnesses in the absence of a statutory protection framework. Third, the Court's statement in *Zahira Habibullah* that the right to a fair trial under Article 21 encompasses the right of witnesses to be protected from intimidation provided the constitutional foundation for the WPS 2018 and for the legislative proposals advanced in this paper.

5.3.2 Sohrabuddin Sheikh Fake Encounter Case

The Sohrabuddin Sheikh fake encounter case is the most extreme documented instance of the hostile witness phenomenon in Indian criminal justice history in terms of sheer numbers. The case involved the alleged extrajudicial killing of Sohrabuddin Sheikh, his wife Kausar Bi, and an associate Tulsiram Prajapati by officers of the Gujarat police in November 2005, presented as a genuine encounter but alleged by the CBI to be a planned murder. The case implicated numerous senior police officers and politicians, making it a case in which the accused had both the motive and the institutional capacity to subvert the prosecution's evidence.

As of the last published judicial record, eighty prosecution witnesses, out of a total of two hundred and ten, had turned hostile before the Special CBI Court in Mumbai. The pattern of witness hostility in the Sohrabuddin case is particularly revealing: witnesses did not merely retract their earlier statements they systematically denied having made the statements to the CBI at all, despite the existence of recorded statements that the CBI sought to confront them with. In November 2019, the Special CBI Court acquitted all twenty-two accused, with the judge noting the wholesale failure of prosecution evidence. The Sohrabuddin acquittal is perhaps the starkest empirical demonstration of the consequences of the absence of statutory witness protection in a case involving the exercise of State power.

5.3.3 2008 Malegaon Blast Case

The 2008 Malegaon blast case, tried before a Special NIA Court in Mumbai, has seen thirty-five or more witnesses declare themselves hostile as of April 2023, in a pattern that NIA prosecutors have attributed to a systematic intimidation campaign. The distinctive feature of the hostile witness phenomenon in this case is the nature of the retraction: witnesses who had given detailed statements to the ATS (Anti-Terrorism Squad) denying those statements before the NIA court, claiming that the statements had been extracted under coercion or duress. Whether these claims are true or false, the pattern, witnesses giving statements to the investigating agency and

then retracting before the court, is precisely the dynamic that effective witness protection is designed to prevent, by assuring witnesses that they will be protected from the consequences of maintaining their testimony.

5.3.4 Mahender Chawla v. Union of India (2019)

The petition in *Mahender Chawla v. Union of India* was filed by witnesses in organised crime and terrorism cases who had sought protection from the State and received inadequate or no response. The petition documented a pattern of State non-compliance with even the limited protection obligations that existed prior to the WPS 2018, and sought the establishment of a comprehensive witness protection framework. The Supreme Court's response, approving the WPS 2018 as a binding instrument and directing Parliament to legislate, was an acknowledgment that the existing framework was wholly inadequate. The Court's simultaneous direction to Parliament underscored that judicial activism, however well-intentioned, is not an adequate substitute for parliamentary legislation in this domain.

6. Structural Deficiencies of the Wps 2018 and the Post-2023 Framework

The Witness Protection Scheme, 2018 represents a genuine and important advance over the preceding total legislative vacuum. It establishes a framework for categorising threats (Category A- threat to life; Category B- threat of grievous hurt; Category C- threat to reputation or property), designates a Competent Authority (DLSA Secretary) to receive and adjudicate protection applications, provides for a Threat Analysis Report by the district police, and specifies a range of protection measures including changed identity, safe accommodation, escort, and use of disguise. Taken in isolation, these provisions are reasonable and consistent with international best practice in their general architecture.

However, a close analysis of the WPS 2018 against the benchmark of international statutory frameworks reveals five fundamental structural deficiencies that collectively render it institutionally inadequate as a long-term solution. Critically, as demonstrated below, none of these deficiencies has been addressed by the BNS, BNSS, or BSA, 2023.

6.1 Deficiency 1: Absence of an Enforceable Legal Right to Protection

The most fundamental deficiency of the WPS 2018 is that it is an executive scheme, not a parliamentary statute. This distinction is not merely formal or technical, it has profound consequences for the enforceability of the protections the Scheme purports to provide. Under the Indian constitutional framework, an Act of Parliament creates legally enforceable rights that can be vindicated before courts as a matter of statutory entitlement. An executive scheme, even one approved by the Supreme Court under Articles 141 and 142, does not do the same, it imposes obligations on State functionaries, but whether those obligations give rise to individual legal rights that witnesses can enforce against the State is a question on which the law is uncertain.

In practical terms, this means that a witness whose application for protection has been wrongly rejected, or whose approved protection has been inadequately implemented, cannot simply bring a civil suit for breach of statutory duty. Their remedies are limited to: (a) approaching the Supreme Court directly under Article 32; (b) filing a writ petition in the relevant High Court under Article 226; or (c) bringing the matter to the attention of the NHRC. These remedies are available in principle but inaccessible in practice to the vast majority of witnesses, who are often poor, poorly educated, and without access to legal representation. The absence of a simple, accessible, first-instance enforcement mechanism, equivalent to an action for breach of statutory duty before a Magistrate or District Court, means that the theoretical protections of the WPS 2018 are effectively unenforceable by individual witnesses.

The BNSS 2023 does not address this deficiency. While Section 530 of the BNSS provides for video-link testimony and Section 536 provides for in-camera proceedings, neither provision confers any right to protection against extra-judicial intimidation. A witness who is threatened outside the courtroom has no statutory remedy under the BNSS. The absence of an enforceable statutory right to protection remains, as of 2025, the single most significant gap in the Indian witness protection framework.

6.2 Deficiency 2: Absence of an Independent Witness Protection Authority

Under the WPS 2018, the institutional architecture for witness protection is built around two State-level functionaries: the Secretary of the District Legal Services Authority (DLSA), who is the Competent Authority for receiving and deciding protection applications; and the Head of the District Police (Superintendent of Police or Commissioner of Police), who is responsible for preparing the Threat Analysis Report that forms the basis of the Competent Authority's decision. This architecture contains a structural conflict of interest that is so fundamental as to undermine the credibility of the entire Scheme in precisely those cases where the need for protection is greatest.

Consider the following scenario, which represents a class of cases, police accountability trials, politically sensitive prosecutions, and cases involving powerful accused with official connections, in which the hostile witness problem is most acute: a witness to a police fake encounter seeks protection under the WPS 2018. The Threat Analysis Report, on the basis of which the Competent Authority will decide whether to grant protection and at what level, is prepared by the district police. The district police may be the same institution whose members are the accused in the trial, or whose institutional culture is deeply hostile to any prosecution of police officers. The conflict of interest is patent, direct, and practically irresolvable within the existing institutional framework.

In contrast, both the US WITSEC programme and Australia's WPA 1994 framework vest the responsibility for witness protection in institutions that are operationally independent of the investigating and prosecuting agencies: the US Marshals Service and the Australian Federal Police, respectively. The USMS, in particular, has no role in investigating or prosecuting crimes, its function is purely protective and enforcement-oriented. This institutional separation ensures that the threat assessment is made by an agency with no institutional interest in the outcome of the underlying prosecution. The absence of an equivalent body in India means that the Threat Analysis Report, the crucial document on which protection decisions rest, is prepared by an agency that may have every institutional incentive to minimise the assessed threat level.

6.3 Deficiency 3: Absence of Dedicated Statutory Funding

The Witness Protection Fund established under the WPS 2018 is built on an inherently unstable financial foundation. The Scheme provides for State-level funds to be constituted from four sources: annual budgetary allocations by State governments; court-imposed fines directed to the Fund under Section 357 of the CrPC (now Section 395 of the BNSS); Corporate Social Responsibility (CSR) contributions; and philanthropic donations. The Central Government has no statutory obligation to contribute to the Fund.

The consequences of this funding architecture are predictable and have been empirically confirmed. The NHRC's 2019 Report found that the majority of State governments had not constituted the Witness Protection Fund at all, more than a year after the Supreme Court had approved the Scheme. In States where funds were constituted, the annual budgetary allocations were typically inadequate for any meaningful relocation or identity change programme. CSR and philanthropic contributions are inherently unreliable as a basis for a public protection scheme of this nature.

The dependence on State budgetary allocations is particularly problematic given the structure of Indian fiscal federalism. Law and order is a State subject under the Seventh Schedule of the Constitution, meaning that the primary financial responsibility for witness protection falls on States whose fiscal capacity varies enormously. The richest States, Maharashtra, Karnataka, Tamil Nadu, have the capacity to fund witness protection programmes if they choose to prioritise them; but the States with the highest levels of organised crime, Bihar, Uttar Pradesh, Jharkhand, may also be the States with the most constrained fiscal resources and the greatest political resistance to effective witness protection.

6.4 Deficiency 4: Absence of an Operational Identity-Change Mechanism

The WPS 2018 provides, under Category A protection measures, for 'change of identity' of the witness and their family members as an option of last resort for the highest-risk witnesses. This provision is, on its face, a recognition that in extreme cases, the only effective protection for a witness is a complete severance of their

existing identity, a new name, a new location, and new documentation that severs all traceable links to their old identity.

However, the WPS 2018 contains absolutely no mechanism for effectuating this identity change. There is no provision empowering the Competent Authority to requisition new identity documents. There is no statutory interface with the Unique Identification Authority of India (UIDAI) that would permit the issuance of a new Aadhaar number under a new identity. There is no provision in the Passports Act, 1967 or the relevant rules that authorises the Ministry of External Affairs to issue a new passport to a witness under a new identity. There is no provision for amending electoral rolls to remove the witness's original identity and add a new one. The identity change provision of the WPS 2018 is, in short, entirely aspirational, it identifies a protection measure as available without creating any of the legal machinery required to deliver it.

In contrast, the US WITSEC programme provides for comprehensive new identity documentation through coordinated Federal agency action: a new Social Security number is issued by the Social Security Administration; a new birth certificate is issued by the relevant State vital records authority; a new passport is issued by the State Department; and a new driver's licence is issued by the relevant State motor vehicles authority. The entire machinery is coordinated by the USMS Witness Security Division under the authority of 18 U.S.C. Sec. 3521(b)(1)(G). No equivalent inter-agency coordination framework exists in India, and the WPS 2018 makes no provision for creating one.

6.5 Deficiency 5: Absence of Uniform National Standards and Independent Oversight

The WPS 2018 is a scheme prepared by the Ministry of Home Affairs and approved by the Supreme Court. It is formally applicable across all States and Union Territories by virtue of the Supreme Court's direction in *Mahender Chawla*. However, in practice, its implementation is entirely dependent on State-level administrative capacity and political will. The Scheme contains no provision for central monitoring, no independent oversight body, and no mechanism for the Centre to intervene when a State fails to implement the Scheme.

The NHRC's 2019 Report and the Supreme Court's subsequent monitoring orders in the VWDC proceedings confirm that implementation varies enormously between States, from States like Maharashtra and Delhi that have made at least some progress in constituting the relevant authorities and funds, to States like Tamil Nadu and Odisha that had, as of January 2024, not even complied with the more modest VWDC directions. This variation means that the protection available to a witness in India depends significantly on which State the witness happens to be in, a lottery of geography that is incompatible with a constitutional right to protection.

The WPS 2018 also provides for protection only 'for the duration of the investigation and trial' (extendable by the Competent Authority on application). In contrast, the US WITSEC provides lifetime protection for witnesses where the risk persists beyond the conclusion of the trial, recognising that organised crime and terrorism cases often involve long-term threats that do not dissolve when the verdict is delivered. The three-month default protection period under the WPS 2018 is manifestly inadequate for witnesses in complex, multi-year organised crime or terrorism trials.

7. Comparative Analysis: Witness Protection In The Usa, UK, and Australia

7.1 Rationale for the Chosen Comparators

The selection of the United States, the United Kingdom, and Australia as comparator jurisdictions is not arbitrary. All three are common law systems that share with India the adversarial trial model, a presumption of oral testimony, and a confrontation right for the accused. All three are constitutional democracies with independent judiciaries, making their legal solutions for the confrontation-protection tension constitutionally relevant to India. All three have enacted dedicated statutory frameworks for witness protection in response to problems of organised crime and terrorism that are structurally similar to those that India faces. And all three offer, across the nine analytical dimensions, specific mechanisms that can be adapted and transposed into the Indian constitutional framework, not merely admired as foreign law but used as templates for Indian legislation.

7.2 United States: The WITSEC Programme

7.2.1 Legal and Historical Foundation

The US Witness Security Program (WITSEC) has its origins in the Organised Crime Control Act, 1970, enacted during the Nixon administration as part of a broader legislative offensive against the Mafia and organised crime. Title V of the Act (codified at 18 U.S.C. Sec.Sec. 3521-3528) authorised the Attorney General to provide for the relocation and protection of witnesses in federal criminal proceedings where the testimony of the witness related to organised crime or a serious federal felony. The programme was operationally established in 1971 under the administration of Gerald Shur, a DOJ attorney who remained its principal architect for nearly three decades.

Since its establishment in 1971, WITSEC has provided protection and relocation to more than 19,000 persons, witnesses and their family members. The programme has never lost a witness who complied with the programme's rules. The conviction rate in federal trials where WITSEC witnesses testified has been documented at approximately 89%, consistently above the general federal trial conviction rate of approximately 85-90%. These statistics represent the most powerful empirical argument for effective statutory witness protection: it is not merely humanitarian but instrumentally enhances the quality and availability of evidence in prosecutions of the most serious offences.

7.2.2 Institutional Architecture

WITSEC is administered by the Witness Security Division of the United States Marshals Service (USMS), an executive agency within the Department of Justice that is operationally distinct from the FBI and DEA (which investigate federal crimes) and from the US Attorneys' offices (which prosecute them). This separation is critical: the USMS has no institutional stake in the outcome of the underlying prosecution, making it genuinely neutral in its assessment of the witness's needs and the adequacy of proposed protection measures. The programme is funded through direct Federal appropriations, there is no dependence on voluntary State-level contributions, CSR donations, or court fines.

7.2.3 Confrontation Right and Constitutional Standards

The US constitutional standard for the confrontation right is contained in the Sixth Amendment, which guarantees the accused the right 'to be confronted with the witnesses against him.' The Supreme Court has interpreted this right through two landmark decisions that are directly relevant to the Indian anonymity framework. In *Maryland v. Craig*, 497 U.S. 836 (1990), the Court held that the confrontation right is not absolute and may be satisfied by alternatives to face-to-face confrontation, including testimony by one-way closed-circuit television, where the State demonstrates that the alternative is necessary to further an important State interest and that the reliability of the testimony is otherwise assured. This holding provides the constitutional architecture for video-link testimony provisions such as BNSS Section 530.

In *Crawford v. Washington*, 541 U.S. 36 (2004), the Court revisited the confrontation right in the context of hearsay evidence and held that testimonial hearsay, out-of-court statements made in anticipation of trial, cannot be admitted unless the declarant is available for cross-examination or the defendant had a prior opportunity to cross-examine. The *Crawford* holding has significant implications for the forfeiture by wrongdoing doctrine: Federal Rule of Evidence 804(b)(6) provides that a party who, by wrongdoing, procures the unavailability of a witness forfeits the right to object to the admission of that witness's prior statements. This rule is constitutionally consistent with *Crawford* because the accused's own wrongdoing defeats the confrontation right, a principle that, if adopted in India, would fundamentally change the dynamics of witness intimidation cases.

7.3 United Kingdom: A Layered Statutory Framework

7.3.1 Evolution of the UK Framework

The United Kingdom has developed its witness protection framework through a series of incremental statutory enactments over approximately three decades, each responding to specific identified gaps in the existing law. This evolutionary approach, building a comprehensive framework layer by layer rather than in a single omnibus statute,

offers a useful model for India, where it may be more politically feasible to proceed in stages than to enact a comprehensive Act in a single legislative session.

The first pillar of the UK framework is the Youth Justice and Criminal Evidence Act 1999 (YJCEA), which established the 'special measures' regime for vulnerable and intimidated witnesses. Sections 16 to 30 of the YJCEA provide eight categories of special measures that a court may direct for the giving of evidence by an eligible witness: screens, live link (video testimony), evidence given in private (in-camera), removal of wigs and gowns, video-recorded examination-in-chief, video-recorded cross-examination and re-examination, examination through an intermediary, and aids to communication. The YJCEA framework is notable for its breadth, it applies not only to witnesses who fear for their safety but to all witnesses whose quality of evidence is likely to be diminished by reason of fear, distress, age, physical disability, or mental disorder.

The second pillar is the Serious Organised Crime and Police Act 2005 (SOCPA), Section 87 of which creates a specific criminal offence of disclosing information that might identify or locate a person who has been given a new identity under a witness protection arrangement. This provision fills a critical gap that India's framework entirely lacks: there is currently no specific criminal offence in India for revealing the identity or location of a witness who is under protection. The SOCPA provision creates a powerful deterrent against the kind of information leakage that might compromise a witness's safety after they have been relocated.

The third and most sophisticated pillar is the Coroners and Justice Act 2009 (CJA 2009), Sections 86 to 92, which establish the framework for witness anonymity orders. A witness anonymity order is a court order that withholds from the accused (and from the public) certain identifying information about a witness, their name, address, appearance, and voice, to enable that witness to testify without the accused knowing who they are. The CJA 2009 anonymity framework was developed in response to the House of Lords decision in *R v. Davis*, [2008] UKHL 36, which struck down the common law basis for witness anonymity and prompted Parliament to legislate.

7.3.2 The Three-Condition Anonymity Test

The CJA 2009 establishes a three-condition test for the granting of witness anonymity orders, which represents the most sophisticated legislative reconciliation of the witness's protection right and the accused's fair trial right available in the comparative record. The three conditions are:

Condition A (Necessity): The measures must be necessary for the purpose of (i) protecting the safety of the witness or another person, or (ii) preventing serious damage to property, or (iii) preventing real harm to the public interest.

Condition B (Consistency with fair trial): The effect of the order would not be inconsistent with the defendant receiving a fair trial.

Condition C (Importance of testimony): The importance of the witness's testimony is such that in the interests of justice the witness ought to testify.

All three conditions must be satisfied for an anonymity order to be made. The Court of Appeal in *R v. Mayers*, [2008] EWCA Crim 2989, has further held that an anonymity order should be a measure of last practicable resort, it should be granted only where lesser protective measures (screens, live link, in-camera proceedings) are insufficient to achieve the necessary degree of protection. This proportionality requirement ensures that anonymity orders are not routinely used as a first resort but are reserved for the most serious cases.

7.3.3 ECHR Jurisprudence: The Counterbalancing Safeguards Doctrine

The European Court of Human Rights has developed, through its jurisprudence under Article 6 of the European Convention on Human Rights (right to a fair trial), a sophisticated doctrine for the permissibility of witness anonymity that is directly relevant to India's constitutional framework. In *Doorson v. Netherlands*, (1996) 22 EHRR 330, the Grand Chamber held that the use of anonymous witnesses is not per se incompatible with Article 6, provided that the handicap suffered by the defence as a result of the anonymity is sufficiently counterbalanced by the procedures followed by the judicial authorities.

The 'sole or decisive' test, under which an anonymous witness's evidence could not be the sole or decisive basis for conviction, was further developed in *Al-Khawaja and Tahery v. United Kingdom*, [2011] ECHR 2127 (Grand Chamber). The Grand Chamber in *Al-Khawaja* modified the test to require an overall assessment of the fairness of the proceedings as a whole, rather than a mechanical application of the 'sole or decisive' rule. The question is whether, in the particular case, the disadvantage suffered by the defence as a result of the anonymity is offset by adequate counterbalancing measures, including strong judicial directions to the jury, the ability to challenge the witness's credibility, and the availability of corroborating evidence.

This doctrine is highly compatible with India's constitutional proportionality framework as developed by the Supreme Court in *Modern Dental College and Research Centre v. State of Madhya Pradesh*, (2016) 7 SCC 353, and *Justice K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1. The Indian proportionality doctrine requires that any limitation on a fundamental right be (a) prescribed by law, (b) pursue a legitimate aim, (c) be rationally connected to that aim, (d) be necessary in a democratic society (minimum impairment), and (e) have effects proportionate to the aim pursued. A properly structured witness anonymity framework, with the CJA 2009 three-condition test, the 'last resort' principle from *Mayers*, and adequate counterbalancing safeguards, would satisfy all five elements of the Indian proportionality test.

7.4 Australia: Federal Architecture and Coordination

Australia's Witness Protection Act 1994 (Cth) is of particular relevance to India because both countries share a federal constitutional structure in which law and order is primarily a State and Territory function, and in which the coordination between the Commonwealth and State/Territory levels is a recurring governance challenge. The WPA 1994 (Cth) establishes a federal witness protection programme administered through the Australian Federal Police (AFP), while the nine States and Territories maintain their own separate witness protection programmes under their own legislation, a structure that creates coordination challenges directly analogous to those India faces.

The key features of the Australian framework include: Commissioner-level decision-making on entry into the programme, ensuring senior accountability; a comprehensive menu of protection measures including domestic and international relocation, new identity documents, financial assistance, and counselling; annual review of the necessity for continued protection; and a referral mechanism between the Commonwealth and State/Territory programmes that allows witnesses to be moved between programmes as their circumstances require.

Putt and Anderson's 2022 analysis in the *Criminal Law Forum* identifies the principal deficiency of the Australian model: the coexistence of nine separate State/Territory legislative regimes alongside the Commonwealth Act creates coordination failures, inconsistent minimum standards, and gaps in coverage for witnesses whose cases cross jurisdictional boundaries. This finding is directly applicable to India: the WPS 2018 as a State-administered scheme creates exactly this kind of fragmentation, and the solution, minimum national standards established by Central legislation, is precisely what is needed in India as much as in Australia.

9. Conclusions and Policy Recommendations

9.1 Summary of Findings

This paper set out to address four research questions through a mixed-method empirical and comparative legal analysis. The findings in respect of each question are as follows.

The NCRB data for 2018-2023 reveals a consistent and statistically significant underperformance in conviction rates in precisely those categories of cases where witness intimidation is most prevalent: organised crime, terrorism, crimes against women, and communal violence. The case-based analysis, the Best Bakery case, the Sohrabuddin case, and the 2008 Malegaon blast trial, provides direct, documented evidence of hostile witness behaviour on a scale (35, 80 witnesses turning hostile in single trials) that cannot be explained by coincidence or mere witness unreliability. The judicial record, from *Zahira Habibullah* in 2004 to *Mahender Chawla* in 2019, constitutes a sustained institutional acknowledgment by the highest court of the land that the absence of statutory witness protection is a systemic failure of the criminal justice system. The empirical evidence, taken as a whole, supports the conclusion that the hostile witness phenomenon is verifiable, quantifiable, and causally connected to the structural absence of enforceable protection.

The paper has identified five fundamental deficiencies: the absence of an enforceable legal right to protection; the absence of an independent institutional authority; the absence of dedicated statutory funding; the absence of an operational identity-change mechanism; and the absence of uniform national standards. A systematic review of the BNS, BNSS, and BSA 2023 confirms that none of these deficiencies has been addressed by any of the three new statutes. The 2023 reforms represent, on the witness protection dimension, a missed opportunity of historic proportions.

The paper has demonstrated that the United States, the United Kingdom, and Australia have each developed specific, constitutionally compatible, and legally adaptable mechanisms across the nine analytical dimensions that address each of the five identified Indian deficiencies. The 89% conviction rate in WITSEC trials demonstrates the instrumental case for statutory witness protection. The UK's three-condition CJA 2009 anonymity test offers a proportionality-based framework compatible with India's constitutional doctrine. Australia's federal coordination model offers a template for managing the Central-State division of responsibility in India's federal structure.

The paper has proposed a seven-pillar Witness Protection and Anonymity Act built around: a National Witness Protection Authority; a statutory right to protection; a three-condition anonymity test; a National Witness Protection Fund; an inter-agency identity document framework; a fear hearsay exception and forfeiture by wrongdoing doctrine; and criminal sanctions for disclosure and interference. Each pillar addresses a specific identified deficiency, draws from a specific comparative model, and is grounded in a specific constitutional basis.

9.2 The Constitutional Imperative

The absence of statutory witness protection legislation in India is not merely a policy failure. It is a failure of constitutional obligation. The Supreme Court in *Zahira Habibullah* (2004) held that the right to a fair trial under Article 21 encompasses the right of witnesses to be protected from intimidation. The Court in *Mahender Chawla* (2019) explicitly directed Parliament to enact comprehensive witness protection legislation. More than five years have passed since that direction. Parliament has enacted, in the 2023 reforms, the most comprehensive criminal law legislation in India's post-independence history, and has remained silent on witness protection. This silence, in the face of a Supreme Court direction, is a constitutional dereliction that the legislature must urgently remedy.

9.3 The International Law Obligation

India's failure to enact witness protection legislation also constitutes a breach of its international treaty obligations. Article 24 of the United Nations Convention against Transnational Organized Crime (UNTOC), which India ratified in May 2011, requires State parties to take appropriate measures within their means to provide effective protection from potential retaliation or intimidation for witnesses in criminal proceedings who give testimony concerning offences covered by the Convention. India has ratified this obligation without enacting the domestic legislation necessary to fulfil it, a gap that exposes India to criticism in its periodic reviews before the Conference of Parties to the UNTOC.

Article 14(3)(e) of the International Covenant on Civil and Political Rights (ICCPR), ratified by India in April 1979, guarantees the right of every person charged with a criminal offence to examine witnesses against them. India's progressive failure to develop a statutory anonymity framework means that it lacks the constitutionally-grounded, ICCPR-compatible mechanism for balancing witness protection against confrontation rights that the UK's CJA 2009 provides. Instead, India faces the choice, in the most serious cases, between protecting witnesses (and thereby potentially violating confrontation rights) and protecting confrontation rights (and thereby abandoning witnesses to intimidation). A properly designed statutory framework, of the kind proposed in this paper, transcends this false choice.

9.4 Seven Policy Recommendations

On the basis of the foregoing analysis, the paper makes the following seven policy recommendations for the Government of India, the Ministry of Home Affairs, the Law Commission of India, and Parliament:

No.	Policy Recommendation	Responsible Body	Priority
1	Enact a standalone Witness Protection and Anonymity Act incorporating the seven pillars identified in Section 9 of this paper. The Act should be modelled on the functional best practices of the US WITSEC, UK CJA 2009, and Australian WPA 1994 frameworks, and should be grounded in the constitutional framework of Articles 14, 19, and 21.	Parliament (Ministry of Home Affairs to prepare draft)	Immediate, within one parliamentary session
2	Establish a National Witness Protection Authority (NWPA) as an independent statutory body with a Director-General appointed through a Supreme Court-chaired Selection Committee. The NWPA should have exclusive jurisdiction over Category A (life-threat) witness protection and should conduct independent Threat Analysis, eliminating the conflict of interest in the current DLSA-district police model.	Central Government; Ministry of Home Affairs	Immediate, concurrently with Act
3	Constitute the National Witness Protection Fund with mandatory annual Central Government contributions (minimum specified in Schedule to Act), matching State contributions, and mandatory direction of all BNSS Section 395 court fines into the Fund. The Fund's accounts must be audited by the CAG and an annual report laid before Parliament.	Ministry of Finance; Ministry of Home Affairs	Immediate, within Act
4	Develop and operationalise the Inter-Agency Identity Document Framework through executive orders under the Aadhaar Act, Passports Act, and Representation of the People Act, pending enactment of the main statute. MoU between the NWPA (or its interim predecessor), UIDAI, MEA, and Election Commission to be executed within six months.	UIDAI; MEA; Election Commission; MHA	Short-term, within six months of Act
5	Amend the BSA 2023 to insert a 'witness in fear' hearsay exception (modelled on CJA 2003, s. 116(2)(e)) and to codify the forfeiture by wrongdoing doctrine (modelled on FRE 804(b)(6) and the principle in Zahira Habibullah). These evidentiary reforms are the most immediately impactful measures for changing the incentive structure of witness intimidation.	Parliament (Law Commission to draft); Ministry of Law and Justice	Short-term, BSA Amendment Act within one year
6	Mandate the NCRB to publish, with effect from the next Crime in India Report, annual disaggregated data on: (a) hostile witness declarations by offence category and State; (b) applications received and decided under the WPS 2018/new Act by State and category; and (c) the	NCRB; Ministry of Home Affairs	Short-term, administrative direction within three months

	number of witnesses under active protection. This data infrastructure is the empirical baseline without which policy evaluation is impossible.		
7	Complete the rollout of Vulnerable Witness Deposition Centres (VWDCs) in all district courts and Sessions Courts, as directed by the Supreme Court, within a statutory deadline of eighteen months from the enactment of the new Act. The new Act should vest the NWPAA with the power to monitor VWDC compliance and to report non-compliance to the Supreme Court.	High Courts; State governments; NWPAA	Medium-term, eighteen months from Act

9.5 Concluding Observations

The empirical record assembled in this paper tells an uncomfortable but unavoidable story. India's criminal justice system is being systematically subverted in its most important cases, organised crime, terrorism, police accountability, and communal violence, by witness intimidation that the State has the knowledge, the constitutional obligation, and the practical capacity to prevent, but has chosen not to. The Witness Protection Scheme, 2018 is a genuine but insufficient response to this crisis; the 2023 criminal law reforms are a comprehensive but deeply inadequate contribution. The legislature has repeatedly been told, by the Supreme Court, by the Law Commission, by the NHRC, and by academic scholarship, what needs to be done. The evidentiary foundation for action is overwhelming.

Jeremy Bentham described witnesses as the eyes and ears of justice. A justice system that abandons its witnesses to intimidation is one that has chosen to be blind and deaf to the truth. India's criminal justice system deserves better than that, and so do the witnesses, the victims, and the communities that depend on it. The enactment of a comprehensive Witness Protection and Anonymity Act is not merely a legislative priority; it is a constitutional imperative, an international legal obligation, and a fundamental requirement of the rule of law.

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