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Legal Protection of Witnesses in Criminal Justice Proceedings

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Abstract— Witnesses are central to criminal adjudication, yet intimidation, inducement, and long trial delays often lead them to retract earlier statements or turn hostile. This study looks at how well legal protection mechanisms for witnesses work in India. It covers the Witness Protection Scheme, 2018, approved by the Supreme Court in *Mahendra Chawla v. Union of India* (2019), and its statutory successor under Section 398 of the Bharatiya Nagarik Suraksha Sanhita, 2023. The study uses a mixed-methods design. The first part is a content analysis of 240 Sessions Court judgments (2019–2024) covering 1,684 prosecution witnesses. The second is a structured survey of 320 stakeholders: public prosecutors, defence advocates, investigating officers, and witnesses who had deposed in criminal trials. Of the 1,684 witnesses, 24.5% were declared hostile. Hostility was significantly lower among witnesses in cases where protection measures were granted (12.3%) than in cases without them (25.6%), $\chi^2(1) = 12.74$, $p < .001$. Delay of more than 24 months between charge-sheet and deposition was the strongest predictor of hostility (AOR = 2.38). Stakeholder groups differed significantly in how effective they found existing protection, $F(3, 316) = 14.83$, $p < .001$. Only 14.3% of witnesses knew the protection scheme existed. The study concludes that protection measures reduce hostility when applied, but they are rarely used, poorly known among witnesses, and weakened by trial delay and inadequate funding.

Keywords: witness protection, hostile witnesses, witness intimidation, criminal justice, fair trial, BNSS 2023, Witness Protection Scheme 2018

Introduction

The criminal justice system relies heavily on oral testimony. Forensic evidence has grown in importance, but most convictions in adversarial systems still depend on what witnesses say in court. Bentham called witnesses the "eyes and ears of justice," and the Supreme Court of India took up the same idea in *Zahira Habibullah Sheikh v. State of Gujarat* (2004). The Court observed there that a fair trial is impossible if witnesses cannot depose freely without fear.

Despite this, witnesses in India have historically had almost no structured legal protection. They face repeated summons, long waits, adjournments, hostile cross-examination, and in serious cases direct threats from the accused or their associates. The result is the "hostile witness" phenomenon: a witness departs from an earlier statement given to police or a magistrate, which weakens the prosecution and often leads to acquittal. The Supreme Court described the plight of witnesses in *Swaran Singh v. State of Punjab* (2000), noting that they are treated with little dignity and often have strong reasons not to support the prosecution.

Legislative and judicial attention to the problem built up over two decades. The Law Commission of India examined hostile witnesses in its 178th Report (2001) and witness identity protection in its 198th Report (2006). The Malimath Committee (2003) recommended a comprehensive witness protection law. In *Mahendra Chawla v. Union of India* (2019), the Supreme Court approved the Witness Protection Scheme, 2018, and directed that it be enforced as law until legislation was enacted. The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) then made witness protection statutory: Section 398 requires every State Government to prepare and notify a witness protection scheme.

The framework exists on paper, but its practical effect has not been systematically measured. This paper asks whether the protection mechanisms actually reduce witness hostility, how stakeholders view them, and what structural factors limit them.

Literature Review

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Scholarship on witness protection has developed along three lines: the nature and prevalence of intimidation, the design of protection programmes, and the balance between protecting witnesses and the rights of the accused.

Nature of witness intimidation. Early empirical work in the United Kingdom showed that intimidation was widespread and seriously under-reported. Maynard (1994), in a Home Office Police Research Group study, found that intimidation was concentrated in high-crime residential areas where witnesses and offenders lived close together, and that much of it was implicit rather than overt. Fyfe and McKay (2000) interviewed witnesses relocated under Scottish police protection. They reported severe disruption to social and family life, which showed that protection carries its own costs. Fyfe (2001) developed this into a fuller account of how intimidated witnesses are managed. He argued that protection must be understood as both a policing practice and a social process.

In the United States, Healey (1995) and Finn and Healey (1996) documented gang- and drug-related intimidation for the National Institute of Justice. They distinguished "overt" intimidation (explicit threats or violence) from "implicit" intimidation (a community-wide climate of fear). Dedel (2006), in a problem-oriented policing guide for the U.S. Department of Justice, grouped intimidation into case-specific and community-wide forms. Dedel recommended responses ranging from minimising witness exposure to formal relocation programmes.

Design of protection programmes. The U.S. Witness Security Reform Act of 1984 (18 U.S.C. §§ 3521–3528) put federal witness relocation on a statutory basis and remains a reference model for comprehensive programmes. The UNODC (2008) compiled international good practices for protecting witnesses in organised crime cases. It stressed that procedural measures (anonymity, screens, video-link testimony) and non-procedural measures (relocation, identity change) should both be available and matched to the level of threat.

In England and Wales, the Youth Justice and Criminal Evidence Act 1999 introduced "special measures" for vulnerable and intimidated witnesses. Hamlyn, Phelps, Turtle, and Sattar (2004) evaluated these measures through surveys. Witnesses who used special measures reported lower anxiety, and a notable proportion said they would not have been willing or able to give evidence without them.

Indian jurisprudence and policy. In *Sakshi v. Union of India* (2004), the Supreme Court authorised screens and similar arrangements so that victims of sexual offences need not face the accused while testifying. The Best Bakery case, *Zahira Habibullah Sheikh v. State of Gujarat* (2004), revealed how mass hostility, driven by intimidation, could derail a trial. The Court ordered a retrial outside the state. In *National Human Rights Commission v. State of Gujarat* (2009), the Court created a Special Investigation Team and directed witness protection measures for the Gujarat riot trials. In *State of Gujarat v. Anirudhsing* (1997), the Court stressed that every citizen has a public duty to give evidence. The Law Commission's 198th Report (2006) proposed a twin structure of witness identity protection during trial and a broader witness protection programme outside the courtroom. The Malimath Committee (2003) reported that witnesses turning hostile was a primary cause of low conviction rates and recommended legislation. These efforts led to *Mahendra Chawla v. Union of India* (2019), which approved the 2018 Scheme. The Scheme classifies witnesses into threat categories, creates a Witness Protection Fund, and provides for a Competent Authority to issue protection orders on the basis of a Threat Analysis Report.

Rights of the accused. The European Court of Human Rights has addressed the tension between witness anonymity and the accused's right to examine witnesses under Article 6(3)(d) of the European Convention on Human Rights. In *Doorson v. Netherlands* (1996), the Court held that anonymous testimony may be allowed if the handicaps to the defence are sufficiently counterbalanced. In *Al-Khawaja and Tahery v. United Kingdom* (2011), the Grand Chamber refined this, holding that untested evidence may be decisive only where strong procedural safeguards exist.

Research Gap

The international literature is substantial, but Indian scholarship on witness protection is mostly doctrinal. It focuses on judicial pronouncements and legislative proposals. Few studies measure empirically whether protection measures actually reduce hostility in trials. Few look at how prosecutors, defence lawyers, police, and witnesses themselves view the protection framework. And little attention has gone to how trial delay interacts with protection. This study addresses these gaps.

Objectives of the Study

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1. To measure how often prosecution witnesses turn hostile across major offence categories in Sessions Court trials.
2. To assess whether witness protection measures are associated with lower hostility rates.
3. To identify case-level factors that predict witness hostility.
4. To examine how different stakeholder groups perceive awareness, effectiveness, and adequacy of the protection framework.
5. To recommend legal and administrative reforms.

Hypotheses

H1: Witnesses in cases where protection measures were granted are significantly less likely to turn hostile than witnesses in cases without protection.

H2: A delay of more than 24 months between filing of the charge-sheet and deposition significantly increases the likelihood of hostility.

H3: Stakeholder groups differ significantly in how effective they perceive existing witness protection measures to be.

Research Methodology

Research design. The study used a convergent mixed-methods design. It combined (a) quantitative content analysis of Sessions Court judgments and (b) a structured cross-sectional survey of stakeholders. The quantitative work was supported by doctrinal analysis of statutes and case law.

Judgment analysis. A total of 240 Sessions Court judgments delivered between January 2019 and December 2024 were selected by stratified random sampling from publicly available district court records in Delhi, Lucknow, and Jaipur. Cases were grouped into four offence categories: murder (n = 72), sexual offences (n = 64), offences under the NDPS Act (n = 48), and property and other offences (n = 56). Each prosecution witness was a unit of analysis, giving 1,684 witness records. For each witness, the following variables were coded from the judgment:

- whether the witness was declared hostile
- whether a protection order or a procedural protection measure (screen, video-link, identity masking) was granted in the case
- months elapsed between the charge-sheet and the deposition
- whether the accused was on bail at the time of deposition
- whether the witness was known to the accused (relative, neighbour, or acquaintance)
- offence category

Two coders independently coded a 20% sub-sample. Inter-coder reliability was high (Cohen's $\kappa = 0.89$).

Stakeholder survey. A structured questionnaire of 18 items on a five-point Likert scale (1 = strongly disagree, 5 = strongly agree), plus dichotomous awareness items, was given to 320 respondents chosen by purposive and snowball sampling:

- public prosecutors (n = 80)
- defence advocates (n = 112)
- investigating police officers (n = 72)
- witnesses who had deposed in criminal trials during the study period (n = 56)

The instrument had good internal consistency (Cronbach's $\alpha = 0.84$). Witnesses also completed a multiple-response checklist on the forms of intimidation they had experienced.

Data analysis. The association between protection and hostility was tested with a chi-square test of independence (H1). The effect of delay was tested with an independent-samples Welch's t-test and binary logistic regression (H2). Differences in perceived effectiveness across stakeholder groups were tested with one-way ANOVA and Tukey's post-hoc test (H3). Analysis was done in SPSS 26 at a significance level of $\alpha = 0.05$.

Ethical considerations. Survey participation was voluntary and anonymous, and informed consent was obtained. Identifying details of witnesses were neither recorded nor reported.

Results

Witness Hostility Across Offence Categories

Table 1: Distribution of Witness Hostility by Offence Category (Judgment Analysis)

Offence Category	Cases (n)	Witnesses Examined	Witnesses Declared Hostile	Hostility Rate (%)
Murder	72	538	158	29.4
Sexual offences	64	402	98	24.4
NDPS offences	48	336	92	27.4

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Property and other offences	56	408	64	15.7
Total	**240**	**1,684**	**412**	**24.5**

Overall, 412 of 1,684 prosecution witnesses (24.5%) were declared hostile. The rate was highest in murder trials (29.4%) and lowest in property and other offences (15.7%). This suggests hostility rises with the seriousness of the offence and with the stakes for the accused.

Protection Measures and Witness Hostility

Protection measures were granted in only 19 of the 240 cases (7.9%). These cases involved 146 witnesses.

Table 2: Witness Hostility by Protection Status

Protection Status	Witnesses (n)	Hostile (n)	Not Hostile (n)	Hostility Rate (%)
Protection measures granted	146	18	128	12.3
No protection measures	1,538	394	1,144	25.6
Total	**1,684**	**412**	**1,272**	**24.5**

$\chi^2(1, N = 1,684) = 12.74, p < .001$

The hostility rate among witnesses in protected cases (12.3%) was less than half the rate in unprotected cases (25.6%). The association was statistically significant, supporting **H1**.

Delay and Hostility

Hostile witnesses deposed after a mean of 28.6 months (SD = 11.2) from the charge-sheet. Non-hostile witnesses deposed after a mean of 19.4 months (SD = 9.7). The difference was significant, Welch's $t \approx 14.95$, $p < .001$.

Table 3: Binary Logistic Regression Predicting Witness Hostility (N = 1,684)

Predictor	Adjusted Odds Ratio	95% CI	p-value
Protection measures granted (vs. none)	0.46	0.27–0.79	.005
Delay > 24 months (vs. ≤ 24 months)	2.38	1.86–3.04	< .001
Accused on bail at deposition (vs. in custody)	1.92	1.47–2.51	< .001
Witness known to accused (vs. stranger)	1.67	1.29–2.16	< .001
Murder (vs. property/other offences)	1.81	1.26–2.60	.001

Model $\chi^2(5) = 196.42$, $p < .001$; Nagelkerke $R^2 = 0.168$; overall classification accuracy = 76.8%

Delay of more than 24 months was the strongest predictor, more than doubling the odds of hostility. This supports **H2**. Protection measures remained a significant protective factor after controlling for other variables (AOR = 0.46). Having the accused on bail and the witness being known to the accused both raised the odds of hostility.

Stakeholder Perceptions

Table 4: Stakeholder Perceptions of the Witness Protection Framework (Mean Scores, 1–5 Scale)

Item	Prosecutors (n = 80)	Defence Advocates (n = 112)	Police (n = 72)	Witnesses (n = 56)	Overall (N = 320)
Intimidation is a major cause of hostility	4.21	3.64	4.08	4.37	4.01
Existing protection measures are effective	2.71	2.38	2.94	1.96	2.52
State funding for witness protection is adequate	1.88	2.12	2.05	1.79	1.99
Video-link/in-camera testimony should be expanded	4.32	3.18	4.11	4.45	3.90

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Aware of the Witness Protection Scheme (% Yes)	91.3%	72.3%	79.2 %	14.3%	68.4 %

On perceived effectiveness, one-way ANOVA showed significant differences between groups, $F(3, 316) = 14.83$, $p < .001$, $\eta^2 = 0.12$, supporting **H3**. Tukey's post-hoc comparisons showed that witnesses rated effectiveness significantly lower than prosecutors and police ($p < .01$). Defence advocates also rated it significantly lower than police ($p < .05$). All groups agreed that funding was inadequate (overall M = 1.99).

Awareness showed the sharpest gap. Of witnesses, 14.3% (8 of 56) knew the Scheme existed, compared with 91.3% of prosecutors. Overall, 219 of 320 respondents (68.4%) were aware of it.

Forms of Intimidation Experienced by Witnesses

Table 5: Forms of Intimidation Reported by Witnesses (n = 56; multiple responses)

Form of Intimidation	Frequency	Percentage (%)
Direct verbal threats	31	55.4
Harassment through repeated adjournments/summons	27	48.2
Threats to family members	24	42.9
Offers of money or pressure to compromise	22	39.3
Social or community pressure	19	33.9
Physical assault	7	12.5
Any form of intimidation	**38**	**67.9**

About two-thirds of witnesses (67.9%) reported at least one form of intimidation. The most common were direct threats (55.4%) and procedural harassment through repeated adjournments (48.2%). Physical assault was relatively rare (12.5%), which matches Maynard's (1994) observation that intimidation is mostly implicit and verbal rather than violent.

Discussion

The findings support all three hypotheses and show a clear pattern: witness protection measures work when they are used, but they are used too rarely to change outcomes across the system.

The overall hostility rate of 24.5%, and 29.4% in murder trials, confirms the concerns raised by the Malimath Committee (2003) and the Law Commission (2001, 2006). Hostility in protected cases was 12.3%, roughly half the 25.6% rate in unprotected cases, and the effect held after controlling for other factors (AOR = 0.46). This mirrors the evidence of Hamlyn et al. (2004) from England and Wales. However, protection was granted in only 7.9% of cases, so its effect on the overall hostility rate was small. The 14.3% awareness rate among witnesses explains much of this: the Scheme depends on an application, and witnesses who do not know it exists cannot seek its protection.

Delay emerged as the strongest predictor of hostility. This finding matters most for policy. A long gap between the event and testimony gives the accused, especially one released on bail (AOR = 1.92), more time and opportunity to influence witnesses. This is consistent with the concern in *Swaran Singh v. State of Punjab* (2000) that procedural harassment discourages witnesses. Nearly half of the witnesses surveyed (48.2%) reported repeated adjournments as a form of harassment. Delay is therefore not only an administrative failure; it functions as a form of intimidation.

The higher odds of hostility among witnesses known to the accused (AOR = 1.67) supports Maynard's (1994) and Fyfe's (2001) argument that social closeness makes intimidation easier and that community pressure can be as coercive as explicit threats. Protection designs that focus only on physical security will miss this dimension.

The perception gap between stakeholder groups also matters. Police and prosecutors rated the system as moderately effective, while witnesses, the people it is meant to protect, rated it lowest (M = 1.96). Defence advocates gave lower support for video-link testimony (M = 3.18). This reflects a legitimate concern about confrontation rights, of the kind the European Court of Human Rights addressed in *Doorson* (1996) and *Al-Khawaja* (2011). Any expansion of procedural protection must include counterbalancing safeguards so that the accused can still test the evidence effectively.

Recommendations

1. **Proactive information.** Investigating officers and prosecutors should be legally required to inform every witness in writing about the protection scheme at the time the statement is recorded.

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2. **Time-bound deposition.** In offences punishable with seven years or more, the testimony of key witnesses should be recorded within a fixed period after charges are framed, with day-to-day trials as the norm.
3. **Bail conditions.** Courts should routinely attach no-contact conditions to bail and treat proven intimidation as grounds for cancelling bail.
4. **Dedicated funding.** States should notify schemes under Section 398 of the BNSS with ring-fenced budgets and transparent annual reporting.
5. **Vulnerable witness deposition centres.** Remote deposition facilities should be expanded with safeguards for cross-examination.
6. **Data systems.** Hostility rates and protection orders should be recorded in court data systems so outcomes can be monitored over time.

Limitations

The judgment sample came from three urban districts and may not represent rural courts. Coding relied on what judgments recorded, so intimidation that was never documented could not be captured. The witness subsample was relatively small (n = 56) and recruited purposively. The data are cross-sectional and associational: they cannot establish that protection causes lower hostility, because cases selected for protection may differ in ways that were not measured.

Conclusion

Legal protection of witnesses is a precondition for a fair trial, not a peripheral procedural matter. This study shows that India's witness protection framework, built through judicial intervention and now statutory under the BNSS, is associated with substantially lower witness hostility where it applies. Its reach is narrow, however. Witnesses rarely know about it, it is underfunded, and it is undermined by trial delays that give the accused time to intimidate witnesses. Making the protection effective will require informing witnesses proactively, speeding up testimony, setting firmer bail conditions, and funding the system adequately, while keeping the accused's right to a fair trial intact.

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