

Witness Protection and Victim Participation in the Indian Criminal Justice System: a Critical Study of Legal and Institutional Mechanisms

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ABSTRACT

This paper critically reviews the emergence of witness protection and participation or co-operation of the victim in the criminal justice system in India with major emphasis on the Witness Protection Scheme, 2018, and Bharatiya Nagarik Suraksha Sanhita, 2023. This study utilises secondary legal and academic sources to analyse the constitutional protections, statutes, judicial developments and institutional mechanisms. It points to systemic issues like witness intimidation, delays in the process, lack of resources within institutions, lack of awareness, trauma and inequity in access to justice. The paper points out that just “being” a protected object is not enough for protection to be effective. To improve the criminal justice system in India, the institutions need to be better coordinated, involve victims in the process, strengthen threat assessment, create specialised agencies and hold them accountable, and compensate victims.

Keywords: Witness Protection; Victim Participation; Indian Criminal Justice System; Bharatiya Nagarik Suraksha Sanhita, 2023; Witness Protection Scheme, 2018; Victim Rights; Criminal Justice Reform; Judicial Protection.

INTRODUCTION

The success of the criminal justice system is not limited to its investigating powers, its prosecuting powers, and the imposition of punishment. It must also consider how far victims and witnesses are protected, heard and treated in a dignified way during criminal proceedings. A successful criminal justice system that has convicted the guilty and yet did not protect and remind a victim from being intimidated, socially isolated, re-traumatised or treated unfairly by the system is not truly effective. Victims are quickly moving from being evidence to a rights-bearing participant in the criminal process. This shift is especially salient in India, where witnesses and victims might face financial constraints, social stigma, institutional hurdles, and intimidation as they strive for justice. Witness protection thus extends beyond concerns for the security of individuals: it can impact on a court's ability to establish criminal guilt or innocence due to witness cooperation. Witness protection programmes therefore have a special significance in the Indian context of criminal justice administration.¹ Physical security is not the only issue, as meaningful security protection can include confidentiality, moving away, psychological support, financial support and protection from social or institutional pressure.² In trafficking and sexual violence cases, sexual exploitation and organised criminal activity, the circumstances of victims and witnesses assume a special significance. In some of these instances, the victim might be the witness whose testimony has been the basis of the prosecution case. These expectations that must be met for such people may contradict their psychological state and ongoing susceptibility. Anti-trafficking research in India highlights the challenges that come with victims giving evidence when they also experience the effects of exploitation and trauma.³ If there are no appropriate safeguards in place, the criminal justice system may then serve as a second trauma. However, the situation is particularly serious for women, as institutional responses can vary between genders and the social nature of specific offences. Studies on the police and justice systems in India also reveal that the gender of the victim may have an impact on access to justice.⁴

The criminal procedure in India has been drastically changed after an enactment known as Bharatiya Nagarik Suraksha Sanhita 2023, replacing the existing Code of Criminal Procedure, 1973. The BNSS includes specific provisions on victim compensation, treatment of victims, and witness protection. All State Governments are

¹ Pattnaik, Baisakhi, and Subhangam Padhy. "Effectiveness of Witness Protection Programs in India." *International Journal of Legal Science and Innovation* 6.4 (2024): 774-787.

² Fatima, Aneela, and Manya Pundhir. "Safe But Seen? Evaluating The Promise And Perils Of Witness Protection In India And The USA." *Janus*. net 16.2 (2025): 445-460.

³ Ramachandran, Vibhuti. "“These girls never give statements”: Anti-trafficking interventions and “victim-witness testimony” in India." *Social Sciences* 11.9 (2022): 405.

⁴ Jassal, Nirvikar. "Does victim gender matter for justice delivery? Police and judicial responses to women's cases in India." *American Political Science Review* 118.3 (2024): 1278-1304.

obliged under Section 398 to establish and publish an approved Operator Protection Scheme for the State. Section 396 deals with victim compensation schemes; and Section 397 deals with victims in certain offences. The fact that these issues are now also recognised in law is important, as victim and witness protection will have evolved significantly without the judicial orders to the contrary and through the Witness Protection Scheme, 2018. The new criminal procedure legislation put compensation, victim treatment, and witness protection into the official statutory language via Sections 395-398. The importance of the protection of the victims from the crime is inseparable from the general environment of the crime that occurs in society and law. Some victims may suffer further disadvantages due to their gender, position in society, minority status or economic status. Structural vulnerability has been shown to have a significant impact on the effectiveness of legal protection of minorities in the cases studied.⁵ Socio-legal analysis of discriminatory policies and laws targeting the Muslim minority in India further shows that formal rights to justice in law are not always equal with access to the same experience in the justice process.⁶ The observations are pertinent to victim participation due to the fact that a formal criminal procedure, which is neutral, can result in an unequal outcome if social inequality is not taken into account in the institutional practices. The criminalisation of certain behaviours also poses challenges to community and individual victim interests and self-determination. The issue of criminalisation of divorce within the context of Triple Talaq is just a testimony to the complexities of the relationship between criminal law, women's rights, and the outcomes of criminal justice involvement.⁷ Likewise, feminist research on sexual violence in India has challenged the viability of punishment-based solutions to its realities and concerns of survivor interests⁸. Another example of the complication is that of marital rape, which is not fully recognised by criminal law. These territories show that protection for victims must be far from mere procedure, as substantive recognition of victimisation can impact access to justice.

2. LITERATURE REVIEW

Previous literature shows that there is an increasing body of scholarly work focusing on protection of victims and witnesses of crime. Pattnaik and Padhy discuss the success of the witness protection programmes in India and draw attention to the ongoing necessity of implementation and witness security to ensure successful criminal proceedings⁹. In this the Fatima and Pundhir give a comparative view on witness protection in India and USA with a proper analysis of security, confidentiality and procedural issues¹⁰. Research on trafficking further demonstrates the difficulties associated with relying upon victim-witness testimony where survivors may experience trauma, coercion and vulnerability. Jassal's research points to a victim-gender gap in the law-related reactions of police and judges; suggesting social and institutional factors can impact access to the justice system. Wyles, O'Leary and Tsantefski highlight the psychological nature of being a witness to traumatic experience, and call for attention to testimony¹¹. The literature, taken together, indicates that there is a clear need for increased safeguards for victims and witnesses, as well as a need to critically reflect on the disconnect between legal protections and their effective enforcement in India's criminal justice system.

3. AIM, OBJECTIVES AND RESEARCH QUESTIONS

Aim

This research aims to critically analyse the legal and institutional framework of witness protection and victim participation with regard to the law of India, and to evaluate their efficiency in protecting the rights of the victims in the present criminal justice system.

Objectives

⁵ Ahmad, Nehaluddin. "Protecting the Rights of Minorities under International Law and Implications of COVID-19: An Overview of the Indian Context. *Laws* 10: 17." *The Crisis of Religious Freedom in the Age of COVID-19 Pandemic* 127 (2021).

⁶ Ahmad, Nehaluddin. "Discriminatory Policies and Laws Target Indian Muslim minorities in the Recent Time: A Socio-Legal Study." *Law and Humanities Quarterly Reviews* 1.2 (2022).

⁷ Parveen, Nazima. "Criminalization of divorce and Muslim women: A reality check of Triple Talaq law, 2019 in India." *South Asia Multidisciplinary Academic Journal* 32 (2024).

⁸ Dash, Preeti Pratishruti. "Feminism and its discontents: Punishing sexual violence in India." *Indian Journal of Gender Studies* 28.1 (2021): 7-28.

⁹ Pattnaik, Baisakhi, and Subhangam Padhy. "Effectiveness of Witness Protection Programs in India." *International Journal of Legal Science and Innovation* 6.4 (2024): 774-787.

¹⁰ Fatima, Aneela, and Manya Pundhir. "Safe But Seen? Evaluating The Promise And Perils Of Witness Protection In India And The USA." *Janus. net* 16.2 (2025): 445-460.

¹¹ Wyles, Paul, Patrick O'Leary, and Menka Tsantefski. "Bearing witness as a process for responding to trauma survivors: A review." *Trauma, Violence, & Abuse* 24.5 (2023): 3078-3093.

The study has four objectives:

To analyse the constitutional and statutory provisions relating to the involvement of victims and the protection of witnesses in India.

To research the protection and participation of victims and witnesses in the court.

To pinpoint legal, procedural and institutional issues that impact the implementation of victim and witness safeguards.

To suggest legal and institutional changes to enhance victim rights and witness support.

Research Questions

What safeguards are there for victims and witnesses in the Indian criminal justice system?

What role has the Indian judiciary played in bringing about victim- and witness-oriented protection?

What institutional and implementation issues impact implementation?

How to improve the criminal justice system to be victim-friendly in India?

4. CONCEPTUAL AND LEGAL FRAMEWORK

4.1 Victim Participation in Criminal Justice

Contemporary criminal justice has provided for the victim's participation based on the idea that crime generates effects beyond the formal State-accused interaction. In the typical case of criminal procedure, the State was regarded as the dominant actor, with the victim commonly cast in the role of complainant or witness who played a less significant role. Modern victim-centred approaches aim to include victims as people with a right to safety, access to information, compensation, representation and to participate in a meaningful way. Not everyone who participates necessarily gives victims choices about prosecution. Instead, their interests are taken into account at the appropriate stage in investigation, trial, sentencing, compensation and rehabilitation. Participation might involve access to information on proceedings, legal support, opportunity to express concerns, access to compensation, or appropriate participation through legal representation if allowed by law. Formal access to proceedings is not always equated with substantive influence or meaningful justice, as a good level of participation is crucial. Gender is one good illustration of this concern since studies have shown that police and judicial outcomes to cases involving women may differ based on victim gender.¹² It suggests that institutional practices which address factors such as vulnerability and social conditions need to be included in formal equality in legislation.

Where children are placed, requires a more specific knowledge of participation. A child may be a witness to a criminal proceeding and need protection from further harm and at the same time have the opportunity to make his or her views known on matters after them. Therefore, mandatory reporting systems and their practice should promote, rather than restrict, participation and decision-making rights of children.¹³ There should therefore be a proper approach to meaningful participation, taking into account the age, maturity, mental state and type of offence. Dignity also closely ties into the participation of victims. The victim should not be unnecessarily questioned, intimidated, treated insensitively or exposed to traumatic material. The aim of criminal procedure should be to obtain honest evidence of the truth and efficient adjudication without further harm. Especially in sexual violence and sex trafficking cases, where the victim may have suffered a lot of physical and emotional trauma. A victim-centred approach thus necessitates the institutions to strike a balance between the proof requirements and sensitivity for the situation in which the victim engages.

4.2 Witness Protection

Witness protection: refers to the legal, procedural and institutional measures to protect witnesses from threats, intimidation, retaliation, coercion and interference. The underlying principle is that people can give evidence freely and honestly, without fear of what might happen if they are involved in criminal proceedings. A witness may be threatened directly by an accused, or indirectly, by a relationship in the family, community or finance. This protection will thus have to consider a larger field of reference in which threats may arise. In serious cases against powerful accused persons, as well as in cases concerning trafficking in slaves, sexual crimes, and organised crime, witness protection would be very productive. Indeed, study in India has revealed that no external protection

¹² Azhar, Sumia, Syed Arshad Ali Rizvi, and Usman Asghar. "Criminal procedure code in Pakistan: Evaluating the process and challenges in investigating crimes." *The Critical Review of Social Sciences Studies* 3.2 (2025): 789-799.

¹³ Ramaswamy, Sheila, et al. "Balancing the law with children's rights to participation and decision-making: Practice guidelines for mandatory reporting processes in child sexual abuse." *Asian Journal of Psychiatry* 81 (2023): 103464.

system can guarantee its effective implementation, even if introduced formally.¹⁴ Protection therefore needs to be understood as an institutional process which encompasses threat assessment and risk classification, security measures, monitoring and suitable support.

Physical security is just one aspect of witness protection. Other factors may also be required: confidentiality, transfer to other location, safe shelter and release of personal information and testimonial conditions. Special considerations need to be given to psychological support when the victim is the witness of a traumatic offence. Research with trauma survivors has reported that seeing the events could be a traumatic experience.¹⁵ Therefore the enhancement act could be looked at as having ramifications that go beyond its evidentiary function in the criminality process. A comprehensive witness protection mechanism should be commensurate with the risk and type of risk. Cases may be treated confidentially, under minimal police escort or may require relocation to secure housing or to be assured of identity. The aim should not be to place undue burden on witnesses, but to ensure that protective measures reflect the risks faced by witnesses. Protection should also be achievable under the criteria for a fair trial, and should not be put in place in a way that unduly impedes the accused's right to challenge evidence.

4.3 Constitutional and Statutory Safeguards

Legal Provision / Instrument	Key Protection	Relevance to Victims/Witnesses	Critical Issue
Article 14, Constitution of India	Equality before law	Provides equal legal protection to victims and witnesses	Formal equality may not address practical vulnerabilities
Article 21, Constitution of India	Life, liberty and dignity	Supports protection from threats, intimidation and degrading treatment	Effective enforcement remains essential
BNSS, 2023, Section 395	Court-ordered compensation	Provides financial assistance to victims	Timely and adequate compensation remains important
BNSS, 2023, Section 396	Victim Compensation Scheme	Provides compensation and rehabilitation mechanisms	Accessibility and implementation vary
BNSS, 2023, Section 397	Treatment of victims	Recognises specific victim-oriented procedural safeguards	Effective institutional compliance is required
BNSS, 2023, Section 398	Witness Protection Scheme	Provides statutory recognition of witness protection	Effectiveness depends upon State-level implementation
Witness Protection Scheme, 2018	Threat assessment and protective measures	Protects witnesses from intimidation and retaliation	Resource and implementation constraints

Table 1: Constitutional and Statutory Safeguards for Victims and Witnesses

Victim and witness protection relate closely to concepts of equality, life, personal liberty and human dignity in the Constitution. Article 14 guarantees equality before the law and Article 21 confers constitutional protection of life and personal liberty. These principles give guidance to how criminal procedure should be interpreted so as to safeguard those who are subject to criminal proceedings. The constitutional framework has special importance for it presumes that criminal justice institutions take account of individual rights and of the fairness of the system as a whole. There has been ample development of the statutory framework with the BNSS. The provisions concerning compensation are found in Section 395, and the provisions about a victim compensation scheme are found in Section 396. The treatment of victims in particular circumstances is provided for in Section 397, and Section 398 specifically provides for a witness protection scheme. The provisions are very significant in the sense that a victim-oriented criminal procedure is recognised for the first time using this type of formality. Section 398 is of significance in that it requires a State Government to prepare and notify a Witness Protection Scheme. This is a new addition that provides witness protection with its own location in the main law on criminal procedure.

¹⁴ Pattnaik, Baisakhi, and Subhangam Padhy. "Effectiveness of Witness Protection Programs in India." *International Journal of Legal Science and Innovation* 6.4 (2024): 774-787.

¹⁵ Wyles, Paul, Patrick O'Leary, and Menka Tsantefski. "Bearing witness as a process for responding to trauma survivors: A review." *Trauma, Violence, & Abuse* 24.5 (2023): 3078-3093.

The critical importance of the provision, however, has to be agreed upon critically as statutes do not necessarily address issues of funding, institutional responsibility, implementation and monitoring.

There are also provisions in the BNSS that are relevant to witnesses other than in Section 398. Section 216 specifies the procedure for witnesses in cases involving threatening conduct, and Section 350 specifies the cost of the complainant and witnesses. Through these measures, the new procedural mechanism includes several mechanisms that are relevant to the treatment and protection of persons involved in criminal proceedings. They will be effective in practice if consistently applied by courts and police groups. It also illustrates the need to consider social vulnerability in the context of the wider legal structure. Studies on minority rights emphasise the need for legal protections in cases of structural disadvantages affecting certain groups.¹⁶ More socio-legal work on discriminatory policies and laws towards the Indian Muslim minorities highlights how broader institutional and social contexts can influence formal (legal) protection.¹⁷ These views challenge the notion that protection of victims must be seen as part of a wider social framework in which criminal justice functions.

4.4 Witness Protection Scheme, 2018

The Witness Protection Scheme, 2018 was a significant advancement in the Indian criminal justice system as it provided a systematic mechanism for safeguarding witnesses against intimidation and retaliation. The Scheme was sanctioned by the Supreme Court in the case of *Mahender Chawla v Union of India* and was meant to be a complete remedy till suitable legislation was drawn. It developed a system of threat assessment and categorisation based on the threat level of the witnesses. The Scheme contains provisions for a multitude of protective measures, depending on circumstances. These may be police protection, temporary change of address and privacy of the victim, relocation and privacy in court. The general concept is that the level of protection afforded to the organism should depend on the type and severity of threat. This type of approach takes into account that intervention needs are not the same for all witnesses. The value of the Scheme is especially apparent when the witnesses do not wish to co-operate, because co-operation may place them or their family at risk. Research basing itself in the Indian context reveals that witness protection is not merely protective measures but the execution of the measures.¹⁸ This involves a division between the legal notion of protection and protection as a service provided within institutions. For the first time, the BNSS has explicitly added witness protection in Section 398. This development and the existing system of witness protection give statutory support to the development. The connection, therefore, between the 2018 Scheme and the statutory obligation under the BNSS is also of significance in that there must be continuity between what is judicially developed and what is legislated.

5. JUDICIAL CONTRIBUTION TO VICTIM AND WITNESS PROTECTION

India's judiciary has been a game-changer in criminal jurisprudence that strives toward victim and witness centrality. The previous practice made the role of judicial intervention critical as this did not include an extensive statutory provision for witness protection. Courts thus looked to gaps, constitutionally, through interpretation, directions to government bodies and recognition of victims' interests as part of the idea of a fair trial. In *Mahender Chawla v Union of India*, the Supreme Court found favour with the Witness Protection Scheme, 2018 and paved the way for its systematic protection. The decision recognised the need to protect witnesses, not simply for convenience but because of the necessity of effectively administering criminal justice.¹⁹ The role of the Court showed that a trial of criminal cases would not function if threats or intimidation hindered the witnesses from giving evidence freely. Witness protection has also been associated with the concept of a fair trial in the judiciary. The Supreme Court's ruling in *Zahira Habibullah Sheikh v State of Gujarat* stressed that witnesses be allowed to testify freely and that criminal proceedings are carried out fairly and credibly. The ruling shows that witness intimidation does not just impact individual witnesses; it can have an impact on the truth-finding role played in the entire judicial process.

¹⁶ Ahmad, Nehaluddin. "Protecting the Rights of Minorities under International Law and Implications of COVID-19: An Overview of the Indian Context. *Laws* 10: 17." *The Crisis of Religious Freedom in the Age of COVID-19 Pandemic* 127 (2021).

¹⁷ Ahmad, Nehaluddin. "Discriminatory Policies and Laws Target Indian Muslim minorities in the Recent Time: A Socio-Legal Study." *Law and Humanities Quarterly Reviews* 1.2 (2022).

¹⁸ Pattnaik, Baisakhi, and Subhangam Padhy. "Effectiveness of Witness Protection Programs in India." *International Journal of Legal Science and Innovation* 6.4 (2024): 774-787.

¹⁹ Dash, Preeti Pratishruti. "Feminism and its discontents: Punishing sexual violence in India." *Indian Journal of Gender Studies* 28.1 (2021): 7-28.

Case	Year	Key Judicial Contribution	Significance for Victim/Witness Protection
Zahira Habibullah Sheikh v State of Gujarat	2006	Emphasised the importance of a fair and credible trial and protection of witness testimony	Established the connection between witness security and fair trial
Mahender Chawla v Union of India	2018/2019	Approved the Witness Protection Scheme, 2018	Created a structured framework for witness protection
Ashwin Kumar Upadhyay v Union of India	2023	Considered implementation of witness protection mechanisms	Reinforced the continuing importance of effective witness protection
Judicial development of victim compensation	Various	Expanded recognition of victims' independent interests	Strengthened the victim-centred approach to criminal justice
Judicial approach to vulnerable victims	Various	Recognised the need for sensitive treatment of women and vulnerable witnesses	Supports dignity, participation and access to justice

Table 2: Major Judicial Developments in Victim and Witness Protection

There is an ongoing emphasis in court following proceedings on the implementation of the Witness Protection Scheme. Supreme Court has issued guidelines for enforcement of the Scheme, and discussed witness protection in vulnerable witness cases. This judicial action shows that the application of protection has continued to be a concern since the 2018 framework was adopted. Judicial involvement also appears in how well victim compensation is developed, as well as recognition of victims' independent interests. Medical costs, loss of wages, rehabilitation requirements and other effects of crime can be addressed through compensation. This trend is partly the result of efforts to include mechanisms that will recognise and actively engage victims as opposed to just evidence for prosecution. Section 396 of the statutory instrument explicitly contemplates compensation for victims. Within judicial protection, the gender aspect still plays an important role in the protection. The studies have shown that victim gender can have an impact on the police and judicial treatment of women's cases.²⁰ The role of courts is thus important in ensuring that the practice of institutions does not aggravate the unequal distribution of legal authority. However, the criminal prosecution of sexual violence underscores the need for judicial engagement. It has been argued that punishment-based strategies do not adequately acknowledge the interests and experiences of sexual violence victims (14). To this end, criminal justice procedures and outcomes should take into account not only the punishment of the offender but also the dignity of the victim, as well as the consequences of criminalisation, procedure and treatment.

Marital rape is another illustration of how legal recognition can be related to protection for the victim. It is important to recognise that socio-legal research on marital rape can reveal the impact of the narrowness of criminal law on the recognition of certain types of victimisation.²¹ Procedural protection alone might not ensure justice for affected people if a form of harm is not sufficient to be adequately recognised by criminal law. Acid attacks also illustrate the consequences of the imperfections of legal and institutional safeguards. The victims might suffer from serious physical injuries, mental effects, monetary problems and rehabilitation requirements. Identifying weaknesses in legislation for acid attacks by analysing the legislation reveals that it has serious consequences for the victims.²² This is not a party to a truly victim-centred approach, since rehabilitation and compensation cannot be considered without taking into consideration prosecution and punishment. However, protection of the judiciary has to be equally consistent with the rights of the accused. The aim of victim involvement should not be to negate the existence of the presumption of innocence and the right to a fair opportunity to cross-challenge. The correct balance is thus one of procedural balance in which the victims are afforded a meaningful protection that does not

²⁰ Jassal, Nirvikar. "Does victim gender matter for justice delivery? Police and judicial responses to women's cases in India." *American Political Science Review* 118.3 (2024): 1278-1304.

²¹ Azhar, Sumia, Syed Arshad Ali Rizvi, and Usman Asghar. "Criminal procedure code in Pakistan: Evaluating the process and challenges in investigating crimes." *The Critical Review of Social Sciences Studies* 3.2 (2025): 789-799.

²² Singh, Ramandeep. "Legal Loopholes and Acid Attacks: Analyzing the Consequences of Weak Legislation in India." *ResearchGate*. (2023).

compromise fundamental defence rights. The judicial contribution has thus been most pronounced in linking the concepts of witness protection and the participation of victims with the key tenets of a constitutional approach, namely dignity, fair treatment and access to justice. The next challenge is maintaining that they eventually become followed as rules, and not just as part of case law.

6. INSTITUTIONAL MECHANISMS AND IMPLEMENTATION CHALLENGES

6.1 Institutional Mechanisms

Coordinated implementation of victim and witness protection is dependent on the cooperation of multiple criminal justice institutions. Police typically take charge of investigations and preliminary risk and physical security assessments. Their job is particularly crucial due to the fact that dangers can arise during the investigation before trial. As a consequence, police outcomes are based on training, resources, accountability and sensitivity towards victims and witnesses. Prosecutors are also important as they speak directly to witnesses and before courts and present evidence. They should stay alert for potential hazards and advise the courts and ensure that witnesses know about the running of the courts. Prosecutors must do more than present evidence in order to secure proper prosecution, however, as they too protect and instil trust in witnesses. Courts have a critical role of supervision of proceedings because they can provide protective directions and make arrangements for procedures for vulnerable witnesses. Intimidation and institutional failures are areas where judicial supervision could be of special importance. Other protective measures such as confidentiality, in-camera or other proceedings may also be considered by courts as appropriate.

Another institutional mechanism is the role of the Legal Services Authorities, which can help many victims who might not need lawyers due to insufficient budgets. The victim compensation linking of the BNSS with State and District Legal Services Authorities. Providing effective legal assistance can then enhance victims' capacity to respond to and implement their rights. The protection measures shall be implemented by the witness protection authorities, as well as designated institutional mechanisms. They are effective if the threat is accurately assessed and there is communication between police, prosecution and judiciary. Appropriate protection can't function if each institution adopts a single, non-connected responsibility approach. For vulnerable victims, specialised institutional mechanisms are of great importance. Trafficking survivors might have suffered coercion, exploitation, and psychological abuse before they went into the criminal justice system. Anti-trafficking interventions demonstrate the challenges of witness testimony in situations where victims suffer from multiple vulnerabilities.²³ Institutions need to therefore link provisions of evidence procedures with considerations of appropriate victim support. Special approaches are needed for children, too. Legal processes that do not consider their psychological development or decision-making ability should not stall their involvement.²⁴ The complexity of designing institutions is further illustrated by the international and comparative experiences. The protection of witnesses is a challenging question of identity, security and institutional responsibility, as illustrated by the Indian case study comparison below.²⁵ Lessons can also be learnt from comparative South Asian research. Research on honour killings in Pakistan illustrates the impact of a community and family environment that undermines legal protection²⁶. According to the analysis of Pakistan's legal framework, the challenges of crime regulation in the country and the effectiveness of criminal justice institutions are highlighted.²⁷ Investigative and procedural issues with the administration of justice in Pakistan stand out more in further studies of criminal procedure.²⁸ The studies showed that there is no institutional capacity without social legitimacy, and vice versa.

6.2 Major Challenges

²³ Ramachandran, Vibhuti. "“These girls never give statements”: Anti-trafficking interventions and “victim-witness testimony” in India." *Social Sciences* 11.9 (2022): 405.

²⁴ Ramaswamy, Sheila, et al. "Balancing the law with children's rights to participation and decision-making: Practice guidelines for mandatory reporting processes in child sexual abuse." *Asian Journal of Psychiatry* 81 (2023): 103464.

²⁵ Fatima, Aneela, and Manya Pundhir. "Safe But Seen? Evaluating The Promise And Perils Of Witness Protection In India And The USA." *Janus. net* 16.2 (2025): 445-460.

²⁶ Shahid, Ali, Malik Husnain Awan, and Farhana Aziz Rana. "Honour killings in Pakistan: legal perspectives and reforms." *Qlantic journal of social sciences* 5.1 (2024): 134-140.

²⁷ Khan, Muhammad Imran, and Sidra Kanwel. "Crime And Pakistan's Legal Framework: A Critical Analysis." *International Journal of Contemporary Issues in Social Sciences* 2.3 (2023): 558-565.

²⁸ Azhar, Sumia, Syed Arshad Ali Rizvi, and Usman Asghar. "Criminal procedure code in Pakistan: Evaluating the process and challenges in investigating crimes." *The Critical Review of Social Sciences Studies* 3.2 (2025): 789-799.

Major Challenge	Impact on Victims/Witnesses	Required Reform
Witness intimidation	Fear may discourage truthful testimony and participation	Early threat assessment and timely protection
Delay in criminal proceedings	Creates psychological, financial and procedural burdens	Faster trials and improved case management
Limited institutional resources	Restricts practical implementation of protection schemes	Dedicated funding and specialised personnel
Lack of awareness	Victims may not access available rights and compensation	Legal awareness and accessible information
Secondary victimisation	Repeated questioning can cause additional trauma	Victim-sensitive investigation and trial procedures
Gender-based inequality	Can influence police and judicial responses	Gender-sensitive training and institutional protocols
Psychological trauma	May affect victims' ability to participate and testify	Counselling and specialised victim-support services
Social vulnerability	Disadvantaged groups may experience additional barriers	Targeted safeguards and accessible legal assistance
Weak institutional coordination	Protection measures may be delayed or fragmented	Integrated coordination between police, prosecution and courts
Limited monitoring	Implementation failures may remain unidentified	Independent monitoring and accountability mechanisms

Table 3: Major Challenges and Recommended Reforms

The first obstacle is that often witnesses will be intimidated. They may be made by the suspects or by family members or society as a whole. However, where the witness thinks he or she or his or her family can be affected by cooperating, he or she may opt not to participate in proceedings or amend the information he or she provides. These consequences have repercussions on the credibility of criminal proceedings. A second hurdle is the delay in indictments in the criminal process. Victim support is a long-term process that can involve frequent court attendance, linkage with traumatic incidents, economic hardship. The delay may also allow opportunities for intimidation, compromise of proceedings or withdrawal of a proceedings. A lack of institutional resources is the third challenge. For effective protection special staff, safe shelter, evacuation, technology or funding is required. Protective measures can be unachievable when they are not accessible. Limited awareness is the 4th challenge. Victims or witnesses may not be aware that compensation, legal aid or witness protection can be made available. If communication is not available, then the rights may have restricted usability. Secondary victimisation is the 5th challenge. The emotions can be puzzling inquiry or reiteration of feelings, social stigma or exposure to painful material that is not needed. These experiences can have a negative impact on participation and community trust of criminal justice institutions. The sixth challenge is gender based inequalities. Empirical studies of women's cases show that social attitudes and reactions of agency may affect the operation of justice²⁹. This means there is a need for gender sensitive training and procedures. The 7th Challenge is on Trauma. Victims and witnesses can be distressed if they repeat traumatic experiences over and over to others. The study of bearing witness focuses on the connection between witnessing and trauma.³⁰ The role of Justice institutions, then, is to minimise repeat processing and provide support, if needed. The 8th challenge has to do with social vulnerability. There are some barriers for minority groups or other disadvantaged groups in formal equality of rules. Effective protections for vulnerable groups are a key part of research on minority protections.

7. CRITICAL ANALYSIS AND RESEARCH FINDINGS

Analysis suggests that India has progressed significantly in taking steps towards recognising victims and witnesses as key actors in the criminal justice process. There has been a structured protection scheme under the Witness Protection Scheme 2018, and judicial judgments have enhanced the legitimacy of witness protection. The BNSS has also reinforced this trend, requiring expressly under Section 398, State Governments to prepare and notify witness protection schemes. The biggest drawback, however, is that legal recognition still cannot reach the level of implementation. Vulnerability can occur in systems of threat assessment despite legal eligibility, if they are unable to access resources or lack clear institutional responsibilities. The evaluation of witness protection

²⁹ Jassal, Nirvikar. "Does victim gender matter for justice delivery? Police and judicial responses to women's cases in India." *American Political Science Review* 118.3 (2024): 1278-1304.

³⁰ Wyles, Paul, Patrick O'Leary, and Menka Tsantefski. "Bearing witness as a process for responding to trauma survivors: A review." *Trauma, Violence, & Abuse* 24.5 (2023): 3078-3093.

programmes was confirmed to be important in India by research in that country, which looked at effectiveness rather than formal safeguards only. One of the major advances is the statutory determination of victim compensation. Section 395 and 396 offer avenues for the award of compensation and the enactment of victim compensation schemes. The effectiveness of these mechanisms should be judged, however, not by their existence but on the basis of their accessibility, timeliness and adequacy. The research also shows that it is impossible to isolate the participation of the victim from social vulnerability. Gender is likely to affect justice delivery, especially related to women's cases.³¹ Children also need increased protection as participation needs to be balanced with developmental and psychological factors³². This suggests that a single strategy for victim participation doesn't meet the needs of all types of victims.

A second key point is that of trauma. Evidence-seeking may involve frequently reexperiencing painful circumstances and thus cause additional psychological distress for the victim. Studies of trauma survivors illustrate the importance of testimony and mental health³³. Thus, the ideal in criminal justice should strive to reduce unnecessary repetition within the criminal justice system, while maintaining the evidentiary integrity of prosecutions. The trafficking crimes vividly illustrate the constraint of narrowly taking evidence as it reads. Victims may have been coerced and exploited before entering the criminal justice process, and may be uncomfortable or unable to engage in criminal justice processes.³⁴ It indicates the need for support systems to go beyond the formal law to ensure effective victim involvement. A more integral legal landscape presents the need for differentiated protection as well. Minority rights, gender-based violence, marital rape and sexual violence cases present various aspects of the interplay between the criminal law and the victim interest.³⁵ Thus, the legal framework must be flexible enough to address various harms and vulnerabilities. Comparative research provides reinforcement of the importance of implementing institutional measures. It shows in the India-USA comparison that choices of security and identity issues in witness protection are complex institutional choices.³⁶ Social structures are often undermining formal legal protections, as demonstrated in research on honour killings.³⁷ Similarly, the results of the Pakistani literature show that if investigation and institutional mechanisms are weak in certain situations, legal rules can become ineffective.³⁸

The findings of the research offer it is to be noted is not a lack of legislation per se. India has a fairly robust system of legal recognition in place, but the system's effectiveness is a function of institutionalisation, access, coordination, resources and accountability. The BNSS is an important chance to streamline existing safeguards into a more victim-focused approach. Another observation is that the protection of the victim should not be restricted to a single point in the criminal process, but be an ongoing process. Protection should commence during the investigation phase and be sustained through trial, compensation and rehabilitation.

8. RECOMMENDATIONS

First, the enforcement of Section 398 of the BNSS should be reinforced by establishing clear institutional mandates, uniform procedures and clear monitoring systems. All States should provide practical procedures in their witness protection arrangement for taking applications evaluating threats, and providing witness protection. The statutory framework establishes State Governments' role in preparing and notifying witness protection schemes. Secondly, a criminal investigation should be sped up to assess witness risk at an early stage of the case. Protection for high-risk witnesses should not rely on actual acts of intimidation. There must be a consideration of the nature of the offence, the influence of the accused, previous threats, the vulnerability of the witness and the

³¹ Jassal, Nirvikar. "Does victim gender matter for justice delivery? Police and judicial responses to women's cases in India." *American Political Science Review* 118.3 (2024): 1278-1304.

³² Ramaswamy, Sheila, et al. "Balancing the law with children's rights to participation and decision-making: Practice guidelines for mandatory reporting processes in child sexual abuse." *Asian Journal of Psychiatry* 81 (2023): 103464.

³³ Wyles, Paul, Patrick O'Leary, and Menka Tsantefski. "Bearing witness as a process for responding to trauma survivors: A review." *Trauma, Violence, & Abuse* 24.5 (2023): 3078-3093.

³⁴ Ahmad, Nehaluddin. "Discriminatory Policies and Laws Target Indian Muslim minorities in the Recent Time: A Socio-Legal Study." *Law and Humanities Quarterly Reviews* 1.2 (2022).

³⁵ Singh, Ramandeep. "Legal Loopholes and Acid Attacks: Analyzing the Consequences of Weak Legislation in India." *ResearchGate*. (2023).

³⁶ Fatima, Aneela, and Manya Pundhir. "Safe But Seen? Evaluating The Promise And Perils Of Witness Protection In India And The USA." *Janus. net* 16.2 (2025): 445-460.

³⁷ Shahid, Ali, Malik Husnain Awan, and Farhana Aziz Rana. "Honour killings in Pakistan: legal perspectives and reforms." *Qlantic journal of social sciences* 5.1 (2024): 134-140.

³⁸ Khan, Muhammad Imran, and Sidra Kanwel. "Crime And Pakistan's Legal Framework: A Critical Analysis." *International Journal of Contemporary Issues in Social Sciences* 2.3 (2023): 558-565.

potential risk to family members in a risk assessment. Third, there is a need to strengthen the participation of the victim promptly by providing information, legal support and compensation. It will be essential for victims to be informed clearly about the progression of the process and the available remedies. Participation should be meaningful yet not interfere with the prosecution's obligation to engage in criminal proceedings or the accused's right to a fair trial. Fourth, victim and witness support units should be established within the criminal justice system and geared towards the specific needs of victims and witnesses. Such units should combine legal, psychological, and security support and ensure that victims do not have to deal with individual institutions without assistance. A model like that would be very helpful for victims of sexual violence, serious physical harm, and trafficking, among other traumatic crimes.

Fifth, child witnesses should be presented with appropriate procedures designed to reduce the need for them to repeat their evidence and respect their rights to take part. Participants should not be discouraged by protection measures from meaningful participation.³⁹ Specialists should be made available to assist children throughout investigation and trial. Sixth, sensitivity training needs to be made available for police officers, prosecutors and judicial personnel. Such training should also cover stereotypes and institutional assumptions which may affect a response by one of these to women reporting crime. This is especially relevant as research shows that police and judicial responses can be impacted by the victim's gender.⁴⁰ Last, the compensation and rehabilitation mechanisms shall be accelerated and easily accessible. Medical treatment, counselling, financial support and rehabilitative measures may be needed before criminal proceedings are finalised to help victims. The statutory victim compensation system provided in the BNSS should thus be realised with effective administration. Eighth, Technology should be used responsibly in order to facilitate secure testimony, confidential communications, case monitoring and the protection of sensitive information. In appropriate situations, use of video-based mechanisms may help to minimise avoidable physical contact with vulnerable witnesses. Technological tools should, however, be used in addition to, and with, human support and should preserve procedural fairness.

9. CONCLUSION

Witness protection and victim participation ensure an effective, credible and fair criminal justice system. The dignity, security and procedure rights of the victims are also being paid special attention in the criminal procedure besides the traditional rights of investigation, prosecution and punishment. Again, it is not to say that this is a society that has not learned that justice isn't merely in the numbers of people it catches, but that justice is in how it does catch and how it is kept safe. In fact, India has made substantial progress with its legislation on this. The court rulings sought to further validate and shape the Witness Protection Scheme that was established in 2018. The Supreme Court's technique brings witness security and the integrity of criminal trials together. The judiciary has, therefore, immensely helped the process of developing Law-oriented approaches that are based on the needs of a victim and the witness in the criminal justice process. The BNSS furthered this by explicitly acknowledging witness protection via Section 398, and victim compensation via Sections 395 and 396. An important opportunity to analyse the judicial and institutional history through the prism of the statutory structure. But protection via law alone will not work. The usefulness of those terms depends on the capacity of State institutions to be consistent and implement them.

The victims and witnesses may continue to face intimidation, delays, institutional shortcomings, gender disparities, social vulnerability, and/or psychological victimization. This could be serious for women, children and trafficking survivors or victims of serious violence. The research reviewed shows that addressing the social and psychological settings of the victim and witness is part and parcel of a response in criminal justice. Legal protection is thus not a singular issue as proved in the study. The legislation has now been greatly strengthened in India. The fundamental one is that with legal recognition there is no implementation. A witness protection provision is a hollow promise with no witness if a witness cannot get protection in time, and a victim compensation provision is a hollow promise without victim if a victim cannot get it, or does not get it. The principle of the victim should be adopted as a rights-bearer in the otherwise rights-based accused persons' criminal justice. Victim participation should not be in violation of the presumption of innocence or a fair hearing. Rather, form a procedural framework where together security, dignity, participation and fairness are at work. This change is backed with the statutory foundation provided by the BNSS. The efficacy of the provisions will probably depend on whether they are put into practice or not. However there is a need for improved implementation, coherence, resources, expertise and monitoring. Investigations of victim participation and witness protection will be essential not only for

³⁹ Ramaswamy, Sheila, et al. "Balancing the law with children's rights to participation and decision-making: Practice guidelines for mandatory reporting processes in child sexual abuse." *Asian Journal of Psychiatry* 81 (2023): 103464.

⁴⁰ Jassal, Nirvikar. "Does victim gender matter for justice delivery? Police and judicial responses to women's cases in India." *American Political Science Review* 118.3 (2024): 1278-1304.

individual victimization but also to restore the credibility, reliability, and legitimacy of the Indian criminal justice system..

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