



A Comparative Analysis Of Witness Protection: Australia And India

Rama^{1*}, Dr. Rahul Varshney²

^{1*}Ph.D Scholar, MVN University, Palwal Haryana, 121105. Email address - 20sl9008w@mvn.edu.in

²Dean School of Law, MVN University, Palwal Haryana, 121105. (Supervisor) rahul.varshney@mvn.edu.in

Citation: Rama, et.al (2023). A Comparative Analysis Of Witness Protection: Australia And India, *Educational Administration: Theory and Practice*, 29(4) 5254-5261

Doi: 10.53555/kuey.v29i4.10124

ARTICLE INFO

ABSTRACT

The paper compares and contrasts the witness protection systems in India and Australia, focussing on the institutional, procedural, and legal aspects of each system. By keeping those who testify in criminal trials secure, witness protection is an essential component of effective criminal justice systems. While Australia have developed comprehensive national programs with strong legal backing and structured enforcement, India's approach remains relatively fragmented, with recent judicial and legislative interventions aiming to strengthen protections. The research evaluates the effectiveness, implementation challenges, and human rights considerations associated with witness protection in each country. Through qualitative analysis of legal documents, policy frameworks, and landmark cases, the study identifies best practices and areas for reform. The findings suggest that while Australia offer robust protection with inter-agency coordination and anonymity safeguards, India is gradually progressing with a formalized scheme but faces hurdles in uniform implementation and resource allocation. This comparative perspective offers valuable insights for policymakers and legal practitioners to enhance witness protection systems, ensuring justice and witness safety across diverse legal landscapes.

Keywords: Witness Protection, Criminal Justice, Legal Framework, Comparative Analysis, Criminal Law, etc

1. INTRODUCTION

Witness protection is an essential component of any fair and effective criminal justice system. Witnesses' willingness to testify freely and without fear of intimidation, retaliation, or harm significantly affects the outcome of criminal trials. The necessity to safeguard witnesses has prompted the creation of official procedures and legislative frameworks in many jurisdictions with the goal of guaranteeing their security and promoting involvement in the judicial system¹.

In Australia, strong institutional collaboration and robust legislative support have facilitated the development of comprehensive witness protection systems. The country has long recognized the importance of preventive measures such as relocation, identity change, anonymity provisions, as well as psychological support to ensure the safety as well as well-being of witnesses. In contrast, India's witness protection system has evolved more recently, driven largely by judicial orders and public interest concerns. While the introduction of the 2018 Witness Protection Scheme marked a significant step forward, challenges such as inadequate funding, inconsistent execution, and low public awareness continue to hinder its effectiveness. These issues underscore the need for further improvements in India's approach to witness protection.

Analyzing the parallels and discrepancies between Australia and India's witness protection systems is the goal of this comparative research. It investigates how well each system protects the rights of witnesses and enforces the law. The research aims to identify best practices and offer avenues for enhancing witness protection in

¹United Nations Office on Drugs and Crime (UNODC), *Good Practices for the Protection of Witnesses in Criminal Proceedings Involving Organized Crime*, Vienna, 2008, pp. 5–10.

various socio-legal situations by assessing legislative provisions, operational frameworks, and practical difficulties².

2. LITERATURE REVIEW

| Author(s) | Year | Focus of Study | Key Points |
|-------------------------------------|------|---|--|
| Prashant Rahangdale et al. | 2019 | Role of witness in criminal justice & witness protection | Highlights witness hostility due to threats/pressure, emphasizes need for effective protection. Mentions Witness Protection Scheme, 2018 but critiques its limited effectiveness ³ . |
| Baisakhi Pattnaik et al. | 2024 | Effectiveness of India's Witness Protection Scheme | Discusses scheme's features (identity change, relocation, secrecy). Notes implementation issues: funding, bureaucracy, inconsistency. Suggests need for SOPs and training ⁴ . |
| Priya Sirohi et al. | 2024 | Victim-centric justice and Victim Impact Statements (VIS) | Explores victims' limited role in Indian justice system. Advocates for VIS during sentencing for empowerment ⁵ . |
| Chandi Prasad Khamari et al. | 2021 | Witness protection as a human right | Underlines fair trial under Article 21. Emphasizes witness confidence in legal system. Calls for global comparison of schemes ⁶ . |
| Vipin Vijay Nair et al. | 2023 | Critical review of India's witness protection | Discusses high-profile hostile witness cases. Reviews Witness Protection Scheme, 2018. Notes infancy of implementation and calls for revision ⁷ . |
| Faisal Shawabkeh et al. | 2023 | Use of video conferencing in testimony | Analyzes legal acceptance of video testimony in UAE & Jordan. Highlights governance and transparency via tech ⁸ . |
| Sakshi Gupta et al. | 2015 | Organized crime & witness protection | Argues for trust-building via protection. Lists protection methods "(relocation, anonymous testimony, etc.). Notes challenges in implementation ⁹ . |
| Paras Chugh et al. | 2023 | Challenges to witness testimony in India | Discusses threats and coercion faced by witnesses. Notes lack of protection system. Cites Law Commission and SC directives ¹⁰ . |
| Wekgari Dulume | 2017 | Witness protection in Ethiopia | Defines importance of witness in justice. Highlights risk of intimidation. Analyzes Ethiopian laws on witness protection. |
| PARAS CHUGH et al. | 2023 | Analysis of witness protection and its importance in the Indian criminal justice system | <ul style="list-style-type: none"> - Witnesses are central to the functioning of courts. - Testimonies help courts in making informed decisions. - Increasing incidents of threats and harassment to witnesses. - Supreme Court's role in revising the policy. |
| Wekgari Dulume | 2017 | Role and protection of witnesses in the Ethiopian justice system | <ul style="list-style-type: none"> - Witnesses are essential from the reporting of crime to the trial. - They are often threatened to obstruct justice. - Importance of protecting witnesses to ensure they testify freely. - Focus on Ethiopia's legal provisions for witness protection. |

2.1 Research gap

The significance of witness protection in maintaining justice is becoming more acknowledged, despite this, there remains a significant gap in comparative studies on how different legal systems address this issue. India is still in the process of developing its witness protection framework, facing challenges such as fragmented policies and inconsistent execution. In contrast, countries like Australia have established comprehensive and well-organized systems for protecting witnesses. However, few studies offer a thorough comparative analysis

² Ministry of Home Affairs, Government of India, *Witness Protection Scheme, 2018*, Notification dated December 2018; also see *Mahender Chawla v. Union of India*, (2019) 14 SCC 615.

³ Prashant Rahangdale, "Witness Protection: A Comparative Analysis of Indian and Australian Legislation," 21 *Journal of The Gujarat Research Society* 141–9 (2019).

⁴ BAISAKHI PATTNAIK, "INTERNATIONAL JOURNAL OF LEGAL Effectiveness of Witness Protection Programs in India" 774–87 (2024).

⁵ Priya Sirohi, "VICTIM IMPACT STATEMENT : COMPARATIVE ANALYSIS OF THE INDIAN CRIMINAL JUSTICE SYSTEM WITH WESTERN COUNTRIES SPECIFIC REFERENCE VICTIM IMPACT STATEMENT : COMPARATIVE ANALYSIS OF THE INDIAN CRIMINAL JUSTICE SYSTEM WITH WESTERN COUNTRIES SPECIFIC REFERENCE T" (2024).

⁶ Chandi Prasad Khamari, "INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES Ambush Marketing," 3 *International Journal of Law Management & Humanities* (2020).

⁷ Vipin Vijay Nair, "The status of victim protection in India: comparative analysis with international regime," 1 *International Journal of Public Law and Policy* 1 (2022).

⁸ Faisal Shawabkeh and Tayil Shiyab, "Comparative and Analytical Study of the Compatibility of Witness Testimony Through Videoconferences With Good Governance in Criminal Proceedings in the Uae and Jordan," 13 *Lawyer Quarterly* 1–17 (2023).

⁹ Sakshi Gupta and Prem Chandra, "An Analysis of Legal Journey towards Witness Protection Scheme in India" 54–63 (2022).

¹⁰ PARAS CHUGH, "WITNESS PROTECTION PROGRAM," I 67–73 (2023).

that explores the strengths, weaknesses, and transferable best practices across various nations. Most existing research tends to focus on the specific frameworks of individual countries, limiting the understanding of how India could improve its own system. This lack of comprehensive comparison restricts the knowledge available to enhance India's witness protection practices by learning from the more advanced systems in countries like Australia. A broader, comparative approach could provide valuable insights into effective strategies for strengthening witness protection in India.

3. RESEARCH METHODOLOGY

This research employs a qualitative comparative research approach to conduct the witness protection frameworks in Australia and India. It primarily utilizes secondary data sources, including legal papers, government reports, scholarly journals, case laws, policy briefs, and publications from international organizations. The research applies a doctrinal legal research method to analyze each country's legislative provisions, constitutional protections, and judicial interpretations.

A comparative analysis technique is used to assess the organization, implementation, effectiveness, and challenges faced by witness protection programs in both countries. Additionally, the study includes a thematic analysis of notable cases that illustrate how witness protection systems are applied in practice.

The collected data is thoroughly analyzed to identify trends, similarities, discrepancies, and best practices. By examining the legislative and operational frameworks of Australia, this research aims to provide insights into how India can enhance its witness protection system by learning from Australia's more developed and effective practices.

4. WITNESS PROTECTION IN INDIA

In India, witness protection has become a hot topic. In the *State of Punjab v. Swaransingh* case (1957),¹¹ The Court has established that evidence is legally admissible in criminal proceedings, with witnesses playing a crucial role in presenting such evidence. It is rare for a witness to voluntarily alter their testimony in court. In the case of *Mahendra Chawla as well as Ors. v. Union of India as well as Ors.* (2019), the Court concluded that threats to a witness's life due to inadequate state protection are a primary reason for witnesses changing their testimony. Such witnesses, who alter their statements due to fear or coercion, are referred to as "hostile witnesses." "According to the 1980 Fourth National Police Commission Report, many Indian witnesses become hostile due to pressure and intimidation from the accused, highlighting the need for legislation to prevent witness manipulation. The situation for witnesses in India is critical, as they often face immense stress, having to endure the trauma of witnessing a crime while living in constant fear for their lives. This emphasises how urgently robust witness protection laws are needed to guarantee that witnesses may testify without worrying about reprisals¹².

4.1 Right to a Fair Trial

This fundamental right to a fair trial is safeguarded by Article 21 of the Indian Constitution, which is a cornerstone of India's democratic system. To ensure justice is upheld, witnesses must have the right to a free and fair trial, as their testimony may make or break a case. Since coercing or threatening witnesses into giving false testimony would be unjust, the Supreme Court emphasised in the landmark case *Zahira Habibullah Sheikh & Anr. v. State of Gujarat & Ors.* (2006)¹³ that this must never happen. In order to ensure that the accused get a fair trial and to protect their rights, this concept is often applied. The accused must have the opportunity to cross-examine all relevant witnesses in order to ensure a fair trial. In the 2012 case of *Mohd. Hussain Julfikar Ali v. the State (Govt. of NCT) Delhi*, "the court upheld the appellant's conviction and found in his favour, despite the fact that only one of the fifty-six witnesses had their cross-examination completed. Strong witness protection is necessary since this shows how crucial a fair trial system is and how even little cross-examination may impact the judgement¹³.

4.2 Witness Protection Scheme 2018

The Witness Protection Scheme was one of the laws that the government of India implemented in the year 2018. It has been necessary to have this sort of Act for a considerable amount of time. As per the verdict that was handed down by the Supreme Court in the case of *State of Gujarat v. Anirudh Singh* (1997), it was mandatory for all witnesses to provide testimony in support of the State. It is not difficult to understand the purpose of this system. Ensure that the rights of Indian witnesses are protected. In addition, the concept makes it possible for a law enforcement officer to accompany the witness to the courtroom where the trial is taking place. When the circumstances are at their most severe, the Act divides witnesses into three distinct categories:

Class A: When a witness or member of their family is threatened with death while the case is being heard.

¹¹ *Swaran Singh v. State of Punjab*, (1957) SCR 953.

¹² *Mahender Chawla and Ors. v. Union of India and Ors.*, (2019) 14 SCC 615; also see *Fourth Report of the National Police Commission*, Government of India, Ministry of Home Affairs, 1980, para 30.3.

¹³ *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248; also see *A.R. Antulay v. R.S. Nayak*, (1992) 1 SCC 225.

Class B: During the course of the inquiry, the witness's as well as his or her family members' property, safety, and reputation are at risk.

Class C: In situations when the witness as well as his or her family members are the sole ones being harassed throughout the proceedings.

The creation of a Witness Protection Fund, intended to pay for expenses incurred under a witness protection order, is another aspect of the Witness Protection Scheme. A competent body must issue a witness protection order, which specifies a thorough set of protective measures catered to the individual requirements of the witness. Throughout the investigation, the Scheme protects the witness and their family members from any possible threats or reprisals by guaranteeing complete identity protection. Measures for relocation, confidentiality, psychological assistance, and ongoing safety monitoring are among the other protections offered by the Scheme. These clauses are intended to provide witnesses with a safe setting so they may cooperate without worrying about being hurt.

1. The witness's home has security cameras installed.
2. Consistent patrols and reconnaissance of the witness' residence.
3. Keeping an eye on the witness's communications, emails, call logs, etc.
4. The witness's relocation in accordance with the threat Analysis Report.
5. The witness is given emergency phone numbers¹⁴.

5. WITNESS PROTECTION IN AUSTRALIA

5.1 Division of Powers under the Constitution

The Australian Constitution assigns significant legislative responsibilities, such as upholding law and order, to the state as well as territory governments. The government of Australia is federal in nature. The division of powers essentially grants the Commonwealth the only right to pass legislation in addition to the states' alleged shared concurrent powers. States have the authority to pass legislation in certain areas thanks to the residual powers that remain.

The Commonwealth does not have a general lawmaking authority, but it does have executive and concurrent constitutional powers that enable it to pass criminal laws. These laws have expanded to address national issues after initially addressing offences against Commonwealth officials or institutions. Upholding law and order is still the responsibility of the state. Section 122 of the Constitution allows the Commonwealth to enact laws for territories until they achieve self-government; for instance, in the late 1970s, the Northern Territory (Self Government) Act 1978 (NT) and in the late 1980s, the Australian Capital Territory (Self Government) Act 1988 (ACT) both achieved self-government¹⁵.

The Constitution's separation of powers provides some safeguard against centralised, capricious governance by vertically allocating legislative responsibility between the federal and state/territorial institutions. This arrangement is similar to the horizontal division of powers into legislative, executive, as well as judicial functions. No level of government may overrule another or have unrestricted legislative authority due to the separation of powers. The founders of the United States government were well-aware of this danger when they draughted the Constitution, which is why they chose a federal system that decentralises power rather than a unitary one that relies on a single, powerful body. Moreover, proponents of federalism point to benefits like government stability, state autonomy, and the encouragement of innovation and adaptation via rivalry between federal and state administrations.

Nevertheless, the federal method has disadvantages. Ineffectiveness, needless red tape, and redundancy, together with a decline in accountability, are not surprising, particularly in a country with six states and two territories like Australia, "which has a comparatively small population. Considering Commonwealth as well as state or territory witness protection procedures, these types of concerns will be examined below¹⁶.

5.2 Commonwealth Witness Protection

Because of Australia's constitutional separation of legislative responsibility, legislation to formalise witness protection have been passed by the Commonwealth, states, and territories, resulting in the establishment of nine different programs. Although Australian state police forces had been enforcing witness protection since the 1980s in reaction to perceived threats to witnesses, the Commonwealth only adopted independent witness protection law in the mid-1990s. According to the Parliamentary Joint Committee on the National Crime Authority (NCA), This was limited to protecting witnesses in their homes and sometimes moving them to nearby towns or motels. A National Witness Protection Program (NWPP) could be set up with the help of

¹⁴ Ministry of Home Affairs, Government of India, *Witness Protection Scheme, 2018*, available at: <https://www.mha.gov.in/notifications/schemes>

¹⁵ Australian Constitution, ss. 51, 61, 109 and 122; also see *Parliament of Australia, History of Criminal Law in Australia*, available at: <https://www.apf.gov.au>

¹⁶ *Northern Territory (Self-Government) Act 1978 (NT); Australian Capital Territory (Self-Government) Act 1988 (ACT)*; also see Saunders, C., *The Constitution of Australia: A Contextual Analysis*, Hart Publishing, 2011, pp. 45–58.

both the states and the federal government, according to the Stewart Royal Commission of 1983, even though a plan for witness protection had already been suggested by the Williams Royal Commission into drug trafficking in 1980, with provisions for the Attorney-General to help with it.

The Police Ministers' Council recommended in 1984 that a committee be established to create relocation agreements between states. The Australian Police Council opposed the creation of a NWPP in 1985, claiming that the state and territory systems already in place were sufficient, despite appeals for more coordination and collaboration. This point of view was also expressed in the 1987 Police Commissioners Conference and the Australasian Crime Conference¹⁷.

5.3 The National Witness Protection Program

In its 1988 report and study, the Parliamentary Joint Committee on the NCA recommended that free witness protection programs be implemented in all states as well as territories. By the 1990s, however, federal, state, and territorial legislation protecting witnesses had expanded. The Commonwealth (Australian Parliament) the Witness Protection Act of 1994 (Cth). With the help of Witnesses for the Prosecution, the Australian Federal Police (AFP) established a nationwide program called the NWPP to ensure the safety of witnesses. Trial Witnesses, Australian Parliament, 2000. In order to prevent participants from utilising false identities to evade civil or criminal liability, this program makes it possible to establish sanctions for disclosing participant information, assign and restore identities, place and remove witnesses, and protect identity documents like passports and tax file numbers¹⁸.

The NWPP reports directly to the AFP Commissioner via the Director of Witness Protection and the senior officer-led Witness Protection Committee, which also includes the Deputy Commissioner of the AFP. Several factors must be considered before a witness may be accepted into the NWPP, but the Commissioner ultimately has the say. The gravity of the crime, the reliability of any supporting evidence, the witness's relationship to other witnesses under consideration for NWPP inclusion, the witness's perceived risk, the witness's membership in the NWPP, the witness's criminal record," the results of any psychological or psychiatric evaluations, the witness's perceived risk, and the feasibility of alternative protection measures are all examples of such factors¹⁹.

Participants are witnesses who are admitted into the NWPP; in essence, the NWPP helps them relocate, alter their identities, and reintegrate into their communities. In order to safeguard witnesses who fall within the jurisdiction of State as well as Territory Commissioners of Police and the Chair of the NCA, the AFP Commissioner may also make agreements with them.

According to Section 3 of the Witness Protection Act 1994 (Cth), the NWPP is open to anyone who has testified or given their consent to testify in a criminal proceeding or offence on behalf of the Crown, made a statement regarding an offence, needs protection and assistance, or is related to someone who does. In addition to the Integrity Commissioner, the Chief Executive of the Australian Crime Commission, or the Police Commissioners of the states or territories, the AFP Commissioner may also enter into agreements with other permitted authorities. (Witness Protection Act 1994 (Cth) s., to safeguard witnesses who are the focus of operations conducted by those organisations. After testifying in instances involving organised crime, significant corruption, narcotics offences, particularly the importation of substantial amounts of illicit substances, or circumstances where joining the NWPP is believed to be the only option to ensure their safety, participants usually join the NWPP²⁰.

The duration of a person's participation in the NWPP is determined by their unique circumstances, such as the length of judicial procedures or persistent security concerns. Prior to commencing the program, participants are required to sign a memorandum of understanding outlining the terms of participation. The NWPP may terminate a participant's participation if they commit a breach of the agreement, provide the Commissioner with inaccurate or misleading information, engage in or threaten to engage in behaviour that undermines the program's integrity, or are no longer deemed a high risk after they have successfully relocated to a new community and enough time has elapsed." A participant's protection and help might be taken away from them if they make a formal request to terminate their participation in the NWPP. Part 18 of the Criminal Code, 1994 (Cth)²¹

5.4 State and Territory Witness Protection Programs

With the passage of the Witness Protection Act 1991 (Vic), Victoria became the first state in Australia to create legally sanctioned programs for protecting witnesses. Prior to this, the Victoria Police Protective Security

¹⁷ *Witness Protection Act 1994 (Cth)*; Parliamentary Joint Committee on the National Crime Authority, *Witness Protection in Australia*, Canberra, 1988, p. 54.

¹⁸ *Witness Protection Act 1994 (Cth)* ss. 7–10, 11, 18–19, 20, 22, 24, 27; see also, Parliament of Australia, *Witnesses for the Prosecution: Protection and Assistance during the Prosecution Process*, 2000, pp. 3–4

¹⁹ Parliament of Australia, *Witnesses for the Prosecution: Protection and Assistance during the Prosecution Process*, 2000, pp. 3, 5

²⁰ *Witness Protection Act 1994 (Cth)* s. 3; Parliament of Australia, *Witnesses for the Prosecution: Protection and Assistance during the Prosecution Process*, 2000, p. 4

²¹ *Witness Protection Act 1994 (Cth)* s. 18; Commonwealth of Australia, Australian Federal Police, *Witness Protection Annual Report 2012*, p. 4.

Group took care of witness protection when needed. The organisation came under heavy criticism after a high-profile operation that cost \$4.5 million and exposed program flaws, such as a shortage of highly qualified police and an appropriate organisational framework to offer witness protection in that state²².

Although there have been some little changes since then, Victoria's witness protection program was founded on a modified version of the US Marshalls witness protection program in the early 1990s. Although witness protection has been in place in New South Wales since the 1980s as part of the Special Weapons and Operations Squad's enforcement efforts to safeguard witnesses in secure sites, the state's special witness protection statute, known as the Witness Protection Act 1995 (NSW), was first established in 1995²³.

The Witness Protection Act (Western Australia) 1996 (WA), which was put into effect in Western Australia in 1996, allows witnesses to be transferred across state lines as well as reciprocal relocation arrangements with other jurisdictions. The state police in the state used to provide witness protection on an as-needed basis, according to the Parliamentary Joint Committee on the NCA.

The Commonwealth legislation, the Witness Protection Act 1994 (Cth) Section 3AA, refers to measures passed by individual states and territories as "supplemental" laws regarding witness protection. When a state or territory has a complementary witness protection law and the Commonwealth and the relevant state or territory have ministerial agreements in place, individuals registered on a witness protection program may be issued Commonwealth identity documents such as passports, tax file numbers, or other prescribed documents²⁴.

The integrity of Commonwealth identity documents is safeguarded by Commonwealth legislation, which is an essential component in the process of establishing different identities for witnesses. The ministerial agreements have been achieved by all of the states and territories, with the exception of Tasmania and the Northern Territory, both of which do not currently have witness protection mechanisms in place. With qualifying conditions that are equivalent to those of the Australian Capital Territory, the rules that protect witnesses in New South Wales, the Northern Territory, South Australia, Victoria, and Western Australia have essentially reproduced the regulations that are in place in the Commonwealth. Tasmania, on the other hand, makes a clear reference to the Commonwealth's regulations on eligibility²⁵.

In addition to earlier applications for witness protection, Queensland further exceeds the requirements established by the Commonwealth by taking into account the witness's ability to provide assistance to authorities. Witness protection in Queensland is overseen by the Crime and Corruption Commission, which is an independent organisation that is led by a chairman rather than a Chief of Police or Commissioner as is the case in other states and territories. This is in contrast to the situation in other Australian states and territory. By virtue of the provisions of section 3(b)(3) of the Witness Protection Act 1991 (Vic), "it is imperative that the Public Interest Monitor be taken into consideration. The Public Interest Monitor in that state is responsible for gathering information on orders or warrants, enhancing accountability, and safeguarding the civil rights and privacy of individuals, all of which are elements that are considered to be in the public interest²⁶.

Table 1. Comparative Analysis of Witness Protection: Australia vs India

| Sr.No. | Key Aspect | Australia | India |
|--------|------------------------------|--|---|
| 1 | Legal Framework | The Witness Protection Act 1994 (Commonwealth) and state-level acts provide a robust legal foundation for protection programs. | Operates under the Witness Protection Scheme, 2018, approved by the Supreme Court; non-statutory and lacks formal legislative backing ²⁷ . |
| 2 | Nature of the Program | Statutory, structured, and legally binding with clear guidelines and authority delegated to agencies. | Scheme-based, discretionary, relies on state implementation; court-initiated and subject to interpretation and variation. |
| 3 | Institutional Infrastructure | Presence of dedicated units within law enforcement agencies, specialized training, and centralized coordination. | Managed by District Witness Protection Committees, often ad hoc, with limited training and institutional capacity. |
| 4 | Protection Measures | Includes identity change, relocation, new documentation, close surveillance, and financial support. | Offers police protection, temporary relocation, change of identity, but often inconsistently applied. |

²² *Witness Protection Act 1991 (Vic)*; Office of Police Integrity Victoria, *Review of the Victoria Police Witness Protection Program*, 2005, p. 6.

²³ *Witness Protection Act 1995 (NSW)*; see also, Office of Police Integrity Victoria, *Review of the Victoria Police Witness Protection Program*, 2005, p. 6.

²⁴ *Witness Protection Act 1996 (SA)*; *Witness Protection Act 1996 (ACT)*; *Witness Protection Act 2000 (Tas)*; *Witness Protection Act 2000 (Qld)*; *Witness Protection (Northern Territory) Act 2002 (NT)*; *Witness Protection Act 1994 (Cth)* s 3AA.

²⁵ *Witness Protection Act 1994 (Cth)* s. 24; Commonwealth of Australia, Australian Federal Police, *Annual Report*, 2012, p. 6.

²⁶ *Witness Protection Act 2000 (Qld)* s. 6(3)(d); *Witness Protection Act 1991 (Vic)* s. 3(b)(3); *Witness Protection Act 2000 (Tas)* s. 5; *Witness Protection Act 1994 (Cth)*; *Witness Protection Act 1996 (SA)*; *Witness Protection (Northern Territory) Act 2002 (NT)*; *Witness Protection Act 1996 (WA)*.

²⁷ *Witness Protection Act 1994 (Cth)*, Commonwealth of Australia. Available at: <https://www.legislation.gov.au/Details/C2023C00145>

| | | | |
|----|-------------------------------|--|--|
| 5 | Witness Participation Process | Witnesses are voluntarily enrolled or referred by legal authorities and are given clear procedural transparency. | Witnesses are generally referred by the court; lack of awareness and procedural ambiguity hinders access to protection. |
| 6 | Funding & Resources | Backed by significant government funding and budgetary allocations at both federal and state levels. | Dependent on state budgets, with many states struggling with inadequate funding and resource allocation ²⁸ . |
| 7 | Coordination Between Agencies | Inter-agency collaboration between police, judiciary, and federal authorities is streamlined and effective. | Poor coordination between judiciary and enforcement agencies; often lacks uniformity across states. |
| 8 | Judicial Oversight | Courts play a supervisory role, but protection is largely managed by executive bodies. | Courts have a direct and proactive role in granting and supervising protection under the 2018 scheme. |
| 9 | Witness Support Services | Offers psychological counseling, medical care, financial aid, and social rehabilitation. | Very limited support services; mostly restricted to physical protection, with mental health and rehab services rarely accessible. |
| 10 | Public Awareness & Outreach | Active public outreach and witness education programs enhance participation and trust. | Minimal awareness among public and legal community; lack of training or advocacy results in underutilization of the scheme. |
| 11 | Effectiveness & Success Rate | Considered highly successful, with strong public trust and low witness hostility or withdrawal in sensitive cases. | Faces challenges of witness intimidation, frequent hostile witnesses, and ineffective implementation in many cases. |
| 12 | Challenges | Occasional issues with cross-jurisdictional implementation and privacy breaches, but generally resolved swiftly. | Major challenges include lack of central legislation, delays, corruption, insufficient training, and political interference. |
| 13 | Best Practices | Known for advanced confidentiality protocols, effective training modules, and comprehensive service delivery. | Needs centralized framework, better inter-agency coordination, uniform training standards, and consistent funding mechanisms ²⁹ . |

6.CONCLUSION

Australia and India have notable differences in their witness protection systems, particularly in terms of institutional processes, legislative frameworks, and execution efficacy. Australia has a well-established and robust system that is supported by specialized laws, agencies, and strong coordination between law enforcement. This enables effective protection for witnesses, ensuring their safety as well as cooperation in legal proceedings. In contrast, India's witness protection system is still developing and faces significant challenges, including low funding, limited awareness, and inconsistent implementation across states. However, India's recent introduction of the Witness Protection Scheme in 2018 marks a significant step forward in strengthening its legal framework. This program takes its cues from the most successful methods that have been implemented in nations like as Australia. These practices include centralised administration, provisions for anonymity, aid with relocation, and psychological support for witnesses. Through the implementation and refinement of these techniques, India is able to improve its witness protection system, so guaranteeing that witnesses are protected from harm and encouraging a greater number of people to testify without fear. The establishment of convictions, the maintenance of the rule of law, and the development of public faith in the judicial system are all dependent on the existence of a witness protection system that is both efficient and effective. In order to build its legal infrastructure and improve the overall integrity of the judicial process, India's continuous progress in this sector would be of critical importance.

REFERENCES

1. United Nations Office on Drugs and Crime (UNODC), *Good Practices for the Protection of Witnesses in Criminal Proceedings Involving Organized Crime*, Vienna, 2008, pp. 5–10.
2. Ministry of Home Affairs, Government of India, *Witness Protection Scheme, 2018*, Notification dated December 2018; also see *Mahender Chawla v. Union of India*, (2019) 14 SCC 615.
3. Prashant Rahangdale, "Witness Protection: A Comparative Analysis of Indian and Australian Legislation," 21 *Journal of The Gujarat Research Socceity* 141–9 (2019).
4. BAISAKHI PATNAIK, "INTERNATIONAL JOURNAL OF LEGAL Effectiveness of Witness Protection Programs in India" 774–87 (2024).
5. Priya Sirohi, "VICTIM IMPACT STATEMENT : COMPARATIVE ANALYSIS OF THE INDIAN CRIMINAL JUSTICE SYSTEM WITH WESTERN COUNTRIES SPECIFIC REFERENCE VICTIM IMPACT STATEMENT: COMPARATIVE ANALYSIS OF THE INDIAN CRIMINAL JUSTICE SYSTEM WITH WESTERN COUNTRIES SPECIFIC REFERENCE T" (2024).

²⁸ Supreme Court of India, *Witness Protection Scheme, 2018*, Approved by the Supreme Court in *W.P. (C) No. 73 of 2018*, Available at: <https://main.sci.gov.in>

²⁹ Madhav, M. (2020), *Challenges of Witness Protection in India*, *Journal of Criminal Law & Criminology*, 48(2), 150-173.

6. Chandi Prasad Khamari, "INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES Ambush Marketing," 3 *International Journal of Law Management & Humanities* (2020).
7. Vipin Vijay Nair, "The status of victim protection in India: comparative analysis with international regime," 1 *International Journal of Public Law and Policy* 1 (2022).
8. Faisal Shawabkeh and Tayil Shiyab, "Comparative and Analytical Study of the Compatibility of Witness Testimony Through Videoconferences With Good Governance in Criminal Proceedings in the Uae and Jordan," 13 *Lawyer Quarterly* 1–17 (2023).
9. Sakshi Gupta and Prem Chandra, "An Analysis of Legal Journey towards Witness Protection Scheme in India" 54–63 (2022).
10. PARAS CHUGH, "WITNESS PROTECTION PROGRAM," I 67–73 (2023).
11. *Swaran Singh v. State of Punjab*, (1957) SCR 953.
12. *Mahender Chawla and Ors. v. Union of India and Ors.*, (2019) 14 SCC 615; also see *Fourth Report of the National Police Commission*, Government of India, Ministry of Home Affairs, 1980, para 30.3.
13. *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248; also see *A.R. Antulay v. R.S. Nayak*, (1992) 1 SCC 225.
14. Ministry of Home Affairs, Government of India, *Witness Protection Scheme, 2018*, available at: <https://www.mha.gov.in/notifications/schemes>
15. Australian Constitution, ss. 51, 61, 109 and 122; also see *Parliament of Australia, History of Criminal Law in Australia*, available at: <https://www.aph.gov.au>
16. *Northern Territory (Self-Government) Act 1978* (NT); *Australian Capital Territory (Self-Government) Act 1988* (ACT); also see Saunders, C., *The Constitution of Australia: A Contextual Analysis*, Hart Publishing, 2011, pp. 45–58.
17. *Witness Protection Act 1994* (Cth); Parliamentary Joint Committee on the National Crime Authority, *Witness Protection in Australia*, Canberra, 1988, p. 54.
18. *Witness Protection Act 1994* (Cth) ss. 7–10, 11, 18–19, 20, 22, 24, 27; see also, Parliament of Australia, *Witnesses for the Prosecution: Protection and Assistance during the Prosecution Process*, 2000, pp. 3–4
19. Parliament of Australia, *Witnesses for the Prosecution: Protection and Assistance during the Prosecution Process*, 2000, pp. 3, 5
20. *Witness Protection Act 1994* (Cth) s. 3; Parliament of Australia, *Witnesses for the Prosecution: Protection and Assistance during the Prosecution Process*, 2000, p. 4
21. *Witness Protection Act 1994* (Cth) s. 18; Commonwealth of Australia, Australian Federal Police, *Witness Protection Annual Report 2012*, p. 4.
22. *Witness Protection Act 1991* (Vic); Office of Police Integrity Victoria, *Review of the Victoria Police Witness Protection Program*, 2005, p. 6.
23. *Witness Protection Act 1995* (NSW); see also, Office of Police Integrity Victoria, *Review of the Victoria Police Witness Protection Program*, 2005, p. 6.
24. *Witness Protection Act (Western Australia) 1996* (WA); Parliamentary Joint Committee on the National Crime Authority, *Report on Witness Protection*, 1988, p. 54.
25. *Witness Protection Act 1996* (SA); *Witness Protection Act 1996* (ACT); *Witness Protection Act 2000* (Tas); *Witness Protection Act 2000* (Qld); *Witness Protection (Northern Territory) Act 2002* (NT); *Witness Protection Act 1994* (Cth) s 3AA.
26. *Witness Protection Act 1994* (Cth) s. 24; Commonwealth of Australia, Australian Federal Police, *Annual Report*, 2012, p. 6.
27. *Witness Protection Act 2000* (Qld) s. 6(3)(d); *Witness Protection Act 1991* (Vic) s. 3(b)(3); *Witness Protection Act 2000* (Tas) s. 5; *Witness Protection Act 1994* (Cth); *Witness Protection Act 1996* (SA); *Witness Protection (Northern Territory) Act 2002* (NT); *Witness Protection Act 1996* (WA).
28. *Witness Protection Act 1994* (Cth), Commonwealth of Australia. Available at: <https://www.legislation.gov.au/Details/C2023C00145>
29. Supreme Court of India, *Witness Protection Scheme, 2018*, Approved by the Supreme Court in *W.P. (C) No. 73 of 2018*, Available at: <https://main.sci.gov.in>
30. Madhav, M. (2020), *Challenges of Witness Protection in India*, *Journal of Criminal Law & Criminology*, 48(2), 150-173.