

## **EXAMINING THE ROLE OF THE INDIAN JUDICIARY IN PROTECTING THE INTEREST OF THE VULNERABLE WITNESS**

**Mr. Ajitabh Mishra\***  
**Dr. Monika Sharma†**

### **ABSTRACT**

Vulnerable witnesses, including children, victims of sexual assault, individuals with disabilities, and those with mental health issues, face unique challenges that can undermine the integrity of their testimonies and compromise justice. Witness intimidation, trauma, and a lack of psychological support during court proceedings are among the main obstacles that necessitate robust protective measures. This paper analyzes judicial initiatives that are taken with respect to the Vulnerable Witness. It discusses minutely about the recent landmark judgement along with the Vulnerable victim Deposition Schemes.

Despite these initiatives, gaps in the uniform application of protective measures across states and a lack of adequate funding continue to hinder the full realization of witness protection goals. This study identifies inconsistencies in the availability of VWDCs, inadequate training of legal professionals, and challenges related to the implementation and monitoring of witness protection schemes as significant obstacles. The paper underscores the importance of continuous training for judicial and non-judicial stakeholders to foster sensitivity and understanding of vulnerable witnesses' needs. Through a comparative analysis with international standards, this study argues for a strengthened legal framework that mandates nationwide consistency in witness protection measures. Ultimately, this research calls for a multi-faceted approach involving judicial reform, financial investment, and interagency collaboration to effectively protect the rights and well-being of vulnerable witnesses, thereby ensuring their meaningful participation in the criminal justice process.

### **INTRODUCTION**

In the Criminal Justice System, the significance of witness testimonies is paramount, as they critically influence case outcomes. However, as key participants in the legal process, witnesses often face threats or undue influence from involved parties, leading them to alter or withdraw their statements. This interference obstructs the pursuit of truth, hindering just and rational verdicts and ultimately leaving victims without the justice they seek. Therefore,

---

\* Research Scholar, Department of Laws, Panjab University, Chandigarh.

† Associate professor, Rayat College of Law, Railmajra.

safeguarding witnesses is essential to uphold the Criminal Justice System's primary goal of fair and truthful adjudication.

The term witness protection describes the steps that are made within the legal process to ensure that a witness will not be harmed for testifying against a suspect, who could be influential or involved in criminal activities.<sup>‡</sup> This is especially common with the witnesses involved in cases proving organized crime, terrorism or political leaders. The main purpose of the witness protection programs is to protect the life of the witness and to ensure that any attempts to influence the witness so that he or she will not be trusted to participate in the judicial process are averted.

At present, witness protection has gained a significant popularity in Indian legal landscape. In the landmark case of *Swaransingh v. State of Punjab*<sup>§</sup>, the court outlined that in the criminal matters evidence has a great role to play and it is admissible. The court also recognized that to provide true and authentic evidence it is essential that witness should not be under any pressure and should not change their stand due to any kind of influence. The another significant case that needs to be discussed is the *Mahendra Chawla and Ors. v. Union of India and ors.*<sup>\*\*</sup> where court held that the major reason for the witness to change their stand is due to the lack on the part of the state to provide them with proper protection and support, particularly in the case where they are given death threat.

Even the several of the government report have highlighted the growing need of victim protection due to the several reasons. The 4<sup>th</sup> national Police Commission Report 1980 has highlighted that witness in India faces the huge pressure and coercion which forces them to go hostile. The report also highlighted that the witness has to go through the severe stress and fear and huge threat in high profile cases.

It is pertinent to mention here that India's First Witness Protection Scheme came into being in the year 2018. It was designed by the central government for the following purpose of affording protection to the witnesses who may be scared or afraid to come forward and give their evidence. The Scheme provides for three categories of witness as per threat perception:

- Category 'A': In case where the threat is to the life of the witness or his /her family members is during investigation/trial or thereafter.

---

<sup>‡</sup> Dr. Abhishek Atrey, Law of Witness: Role of Witness in Criminal Justice System and the Need for Reform 248 (Kamal Publishers, Allahabad, 4<sup>th</sup> edn., 2024)

<sup>§</sup> AIR 2000 SUPREME COURT 2017

<sup>\*\*</sup> AIR ONLINE 2018 SC 829

- Category ‘B’: Where the threat is to the safety, reputation or property of the witness or one who belongs to his/her family in relation to the investigated/tried person or in the future.
- Category ‘C’: Where the threat is moderate and include harassment or intimidation of the witness or his/her family member’s, reputations or property during the investigation/trial or thereafter.

## **THE CONCEPTUAL UNDERSTANDING OF THE WITNESS AND THE VULNERABLE WITNESSES**

In general understanding A witness is an individual who observes a crime and can recount the event when required by the court but however the term witness has not been explained in the Evidence Act, 1872 or B.S.A., 2023.<sup>††</sup> The Lexicon divides witness into ‘One who gives evidence in a cause; an indifferent person to each party, sworn to speak the truth, the whole truth, and nothing but the truth.’

Section 2 (k) of Witness Protection Scheme, 2018 defines witness as: The meaning of ‘witness’ under law, is anyone who has information or any document in relation to any offence. *Mahender Chawla v. Union of India*<sup>‡‡</sup>, As outlined in Section 118 of the Indian Evidence Act of 1872, establishes that anyone can serve as a witness, provided they possess the necessary ability to understand and answer the questions posed to them. However, When Individuals unable to testify in court due to challenges such as mental disorders, physical disabilities, cognitive impairments, or young age (under 18 years) are categorized as Vulnerable Witnesses. This group also encompasses age- and gender-neutral victims of sexual assault, witnesses with mental health conditions, and any witness facing threats, as recognized under the Union Government’s 2018 Witness Protection Scheme. In the case of **Smruti Tukaram Badade v. State of Maharashtra and Anr**<sup>§§</sup>. (2019), the Supreme Court, while examining a special leave petition, observed that the term ‘vulnerable witness’ could extend beyond child witnesses alone. This remark was made in the context of the Delhi High Court Guidelines for protecting vulnerable witnesses, where Section 3 defines a vulnerable witness specifically as a child under 18 years. Unlike this guideline, the Indian Evidence Act under Section 118 does not address the concept of a vulnerable witness. In the United

---

<sup>††</sup> Dr. Shashikant Tripathi, *Criminal Justice System and Witness Protection: Laws, Provisions and Procedure* 112 (Routledge, Allahabad, 4<sup>th</sup> edn., 2021)

<sup>‡‡</sup> AIR 2018 SC (SUPP) 2561

<sup>§§</sup> Special Leave Petition (Crl.)No.4480 of 2019

Kingdom's Youth Justice and Criminal Evidence Act of 1999, however, measures are prescribed for protecting witnesses who face added difficulties in testifying, such as mental or physical disabilities, intelligence-related impairments, or age under 18 years, thus designating them as vulnerable witnesses.

### **ROLE OF JUDICIARY IN PROTECTING VULNERABLE WITNESS**

The judiciary plays a critical role in protecting vulnerable witnesses, ensuring their safety, dignity, and ability to testify without intimidation or harm. In the justice system, vulnerable witnesses, such as children, individuals with mental or physical disabilities, victims of sexual assault, and those under threat, face unique challenges that can deter them from sharing critical evidence. Recognizing these challenges, courts have increasingly emphasized the need for protective measures that create a safe and supportive environment for testimony. Landmark rulings have driven initiatives like Vulnerable Witness Deposition Centres (VWDCs), guidelines for in-camera trials, and allowances for alternative methods of testimony to reduce stress and safeguard witnesses from re-traumatization. Through these actions, the judiciary not only strengthens witness protection but also reinforces the integrity of the justice system, ensuring that all voices, especially those most vulnerable, are heard and respected.

In *Dhanraj and Ors. v. State of Maharashtra*<sup>\*\*\*</sup> (2002), the Supreme Court examined the credibility of a young witness who was a child in class VIII. The Court concluded that a child of this age would likely possess sufficient intelligence to grasp relevant facts and respond appropriately to questions during testimony. As a result, the child's account was deemed admissible. The Court further noted that the witness had stated he was questioned by the police, and his statement was documented on the day the incident occurred, thereby lending credibility to his testimony. In *Zahira Habibullah Sheikh & Anr v. State of Gujarat & Ors*<sup>†††</sup> (2006), the Supreme Court underscored that witnesses should not be coerced or intimidated into providing false evidence, as such actions would compromise the integrity of the trial. The Court highlighted that the fairness of a trial depends on allowing the accused to cross-examine multiple witnesses if needed, reinforcing the principle that fair trials must protect both the rights of witnesses and those of the accused to ensure justice. In another case, *State of Maharashtra v. Bandu*<sup>‡‡‡</sup> (2018), the victim was a 14-year-old girl with

---

<sup>\*\*\*</sup> AIR 2002 SUPREME COURT 3302

<sup>†††</sup> AIR 2006 SUPREME COURT 1367

<sup>‡‡‡</sup> AIR 2017 SUPREME COURT 5414

hearing and speech impairments who alleged that the respondent, Bandu, had sexually assaulted her. Although the High Court had overturned Bandu's conviction on the grounds that the victim was not cross-examined, the Supreme Court reinstated the conviction, emphasizing that the substantial evidence indicated the occurrence of the assault despite the absence of cross-examination. After issuing its order, the Supreme Court proposed the establishment of special examination centers specifically designed for vulnerable witnesses to create a more supportive environment for them to provide statements. Additionally, the Court inquired about the status of setting up such vulnerable witness deposition centers, urging their implementation to aid these witnesses.

The most landmark Judgment that needs to be disused is the **Smruti Tukaram Badade v. State of Maharashtra and Anr**<sup>§§§</sup>. In a directive by the bench of Justices DY Chandrachud and Surya Kant, the Court clarified that the scope of "vulnerable witnesses" as defined in clause 3 of the Vulnerable Witness Deposition Centres (VWDC) scheme by the Delhi High Court would not be restricted solely to child witnesses under 18 years. The definition would be broadened to encompass additional categories of vulnerable witnesses, as follows:

#### Expanding the Definition of the Vulnerable Witness

- Age-neutral victims of sexual assault, as per Sections 273 and 327 of the Cr.P.C. and Section 354 of the IPC;
- Gender-neutral victims of sexual assault, aligning with Section 2(d) of the POCSO Act;
- Age- and gender-neutral victims of sexual assault under Section 377 of the IPC, as referenced in paragraph 34(1) of the *Sakshi v. Union of India*<sup>\*\*\*\*</sup> decision;
- Witnesses with mental illness, as defined in Section 2(s) of the Mental Healthcare Act of 2017 and Section 118 of the Indian Evidence Act;
- Witnesses with a threat perception, as outlined under the Union Government's 2018 Witness Protection Scheme, which was endorsed by the Court in *Mahendra Chawla v. Union of India* (2019, 14 SCC 615);
- Individuals with speech or hearing impairments or any other form of disability who are considered vulnerable by a competent court; and
- Any other witness deemed vulnerable by the concerned court.

<sup>§§§</sup> Special Leave Petition (Crl.)No.4480 of 2019

<sup>\*\*\*\*</sup> 999(5)SCALE376

The other directions issued by the bench are enumerated below-

- All High Courts are mandated to adopt and formally notify a Vulnerable Witness Deposition Centre (VWDC) scheme within two months from the date of this order, unless they have already established a scheme. For those High Courts with existing VWDC schemes, it is recommended that they consider making appropriate modifications to ensure alignment with the guidelines set forth in the current ruling. In developing the VWDC scheme, the High Courts are expected to take into account the framework established by the Delhi High Court, which has received approval in the court's judgment in *Bandhu*.<sup>†††</sup>
- Additionally, each High Court is required to establish a permanent VWDC committee dedicated to overseeing the implementation and functioning of the centres. In light of the time necessary for recording evidence from vulnerable witnesses and conducting regular training programs, every High Court must assess the manpower requirements needed to set up at least one permanent VWDC in each district court establishment. Furthermore, they should determine the optimal number of VWDCs needed across the entire state within a three-month timeframe. This comprehensive approach aims to ensure that vulnerable witnesses receive the necessary support and protection, facilitating their participation in the judicial process while upholding the integrity of the legal system.
- Recognizing the critical need for ongoing training programs aimed at effectively managing the Vulnerable Witness Deposition Centres (VWDCs) and raising awareness among all involved parties—including judicial officers, members of the bar, and court staff—Justice Ms. Gita Mittal, the former Chief Justice of the Jammu and Kashmir High Court, has been requested to lead a committee responsible for designing and implementing a nationwide VWDC training program. The initial tenure for the chairperson of this committee will be set for two years. All High Courts, along with relevant stakeholders, are expected to support and actively cooperate in facilitating training sessions according to the module developed by the chairperson.
- Furthermore, once the VWDC committee of each High Court estimates the costs associated with the proposed training programs, the state government is obliged to

---

<sup>†††</sup> SC Expands the Definition of Vulnerable Witness: Directs HCs to Frame vulnerable Witness Deposition Scheme, *available at*: <https://www.livelaw.in/top-stories/supreme-court-vulnerable-witnesses-definition-vwdc-recording-of-evidence> (last visited on Jan. 19, 2024)

swiftly approve the necessary funds within three months of receiving the proposal and to disburse those funds in line with the project plan. To assist in this process, the state government will appoint a nodal officer from the finance department to serve as an ex-officio member of the VWDC committee, ensuring efficient collaboration in implementing the proposals put forth by the High Court in accordance with the established directives. Additionally, the High Court must guarantee the establishment of at least one permanent VWDC within each district court within four months. To ensure accountability, the registrar general will be responsible for filing a compliance report with this court, detailing the progress made in fulfilling these requirements. This structured approach aims to enhance the capacity and effectiveness of the VWDCs, thereby ensuring better support for vulnerable witnesses within the judicial system.

- In several states, Alternative Dispute Resolution (ADR) centers, established by the High Court, are located conveniently close to district court premises. When such ADR centers are operational, the High Courts may choose to integrate a Vulnerable Witness Deposition Centre (VWDC) within the ADR center's premises. This setup would provide a secure, accessible, and barrier-free environment for vulnerable witnesses to give their testimony, ensuring their comfort and safety throughout the process.
- Additionally, the National Legal Services Authority (NALSA) and State Legal Services Authorities (SALSAs) play a pivotal role in this framework, especially in developing and conducting sensitization and training initiatives. The committee chairperson, appointed by the court, is encouraged to collaborate with NALSA and SALSAs to establish a solid and efficient platform for implementing these training programs.
- In cases where further administrative or judicial actions are required, the Chief Justices of High Courts are granted the authority to undertake necessary measures. They may operate either on the administrative or judicial side to advance these directives and are expected to periodically review compliance with these measures to maintain consistent progress and adherence to the guidelines set forth by the court. This collaborative and structured approach aims to strengthen the support and protection provided to vulnerable witnesses in the judicial process.



- The Ministry of Women and Child Development, both at the Union and State levels, is tasked with appointing a nodal officer to oversee the coordination and implementation of these directives, providing necessary logistical support to Justice Ms. Gita Mittal, who chairs the court-appointed committee. In a show of cooperation, both the Union and State Ministries for Women and Child Development are expected to assist the chairperson by offering logistical and financial backing, particularly for the payment of reasonable honoraria to resource persons who will conduct training sessions for relevant stakeholders. To ensure comprehensive training and development, each High Court is also directed, in consultation with the committee chairperson, to enlist experts in the field who can contribute to the effective training of all those involved in this process.
- To facilitate compliance, the court has mandated that a copy of this order be sent by the Registrar General to the Secretary of the Union Ministry of Women and Child Development, as well as to the secretaries of the respective state governments. Additionally, copies are to be sent via email to the Registrars General of all High Courts to enable necessary actions. These directions aim to create a secure and supportive environment for vulnerable witnesses when providing testimony. In line with this objective, and following the Supreme Court's guidance in *Smruti Tukaram Badade v. State of Maharashtra and Anr.*,<sup>\*\*\*\*</sup> the High Court of Orissa has introduced "The High Court of Orissa Vulnerable Witnesses Deposition Centres (VWDC) Scheme, 2022," which formalizes these protective measures for vulnerable witnesses within its jurisdiction.

### What is the Vulnerable Witness Deposition Centre (VWDC) Scheme?

The Supreme Court has underscored the importance of establishing Vulnerable Witness Deposition Centres (VWDCs) to ensure a supportive and accessible environment for vulnerable witnesses. As part of these directives, the Court emphasized the need for these centers to provide a barrier-free atmosphere where witnesses can safely and comfortably record their statements. In pursuit of a nationwide rollout, the Court ordered that a VWDC scheme be formally adopted across all High Courts within a span of two months. The High Courts are further required to form a permanent VWDC Committee tasked with supervising the setup, maintenance, and continuous improvement of these centers. Additionally, the

---

<sup>\*\*\*\*</sup> Special Leave Petition (Crl.)No.4480 of 2019



Court mandated the establishment of at least one VWDC in each district, ideally located near existing Alternative Dispute Resolution (ADR) centers to ensure accessibility and a cohesive support network for witnesses. By instituting these comprehensive measures, the Court aims to enhance the overall integrity and accessibility of witness testimonies within the justice system, safeguarding the rights and well-being of vulnerable witnesses at each step of the process.

The Supreme Court placed a strong emphasis on the necessity of comprehensive training programs for managing and operating Vulnerable Witness Deposition Centres (VWDCs) and ensuring that all involved members and stakeholders are well-equipped.<sup>§§§§</sup> To spearhead this initiative, the Court appointed Justice Gita Mittal, former Chief Justice of the Jammu and Kashmir High Court, as the Chairperson of the committee responsible for designing and implementing an All-India VWDC training program. Her initial term as Chairperson was specified to last two years, during which she would oversee the program's rollout and ensure its effectiveness. To support a seamless implementation and provide a robust framework for these training sessions, the National and State Legal Services Authorities (NALSA and SLSAs) were encouraged to collaborate closely with Justice Mittal. Furthermore, for essential logistical support and coordination, the Union Ministry of Women and Child Development was directed to appoint a nodal officer. This officer will act as a liaison, facilitating communication between stakeholders and providing necessary resources to support the Chairperson and training program requirements across India.

The Court mandated that every State establish at least two dedicated vulnerable witness deposition centres within the jurisdiction of each High Court nationwide. This directive aimed to alleviate the distress and anxiety experienced by vulnerable witnesses during legal proceedings. Such centres specifically cater to child witnesses and victims of severe offenses, including rape and sexual assault, who require additional protection. To ensure these individuals feel secure, each centre will be equipped with comprehensive protective measures that create a safeguarded environment for testimonies. In 2019, Gujarat inaugurated its first vulnerable witness deposition centre in Vadodara, directly connected to the Chhota Udepur District Court and featuring separate entry and exit points. The layout was carefully designed to prevent any form of direct or indirect interaction between witnesses and external individuals. The facility also includes a private restroom, pantry,

---

<sup>§§§§</sup> State of Maharashtra v Bandu @ Daulat, (2018) 11 SCC 163

television, and a children's play area to enhance comfort and support the well-being of the witnesses.

In 2017, the Delhi High Court introduced guidelines aimed at safeguarding vulnerable witnesses in India, setting a foundational framework to protect them within the criminal justice process. The objectives of these guidelines are threefold: first, they aim to balance the integrity of the trial with the protection of witnesses, ensuring that testimony is provided without compromising fairness; second, they seek to minimize the additional trauma and victimization that vulnerable witnesses may experience through their involvement in legal proceedings; third, they focus on preserving the reliability and security of witness testimony. Key sections of these guidelines outline specific measures to support vulnerable witnesses. Section 13, for example, grants vulnerable witnesses the right to visit the court before trial, helping them acclimate to the environment. Section 17 ensures that such witnesses receive legal assistance from the court, while Section 24 requires the court to create a comfortable and supportive atmosphere for them. Further, Section 34 instructs the court to communicate clearly with the witness, guiding them to listen carefully and respond honestly. To protect witness information, Section 38(a) mandates that the court maintain confidentiality and seal witness records. Lastly, Section 39 allows the court to implement protective actions if a vulnerable witness, such as a child, faces safety concerns. These measures may include preventing any direct or indirect interaction between the witness and the accused, as well as involving police or other authorities to ensure the witness's security.

The High Court of Orissa Vulnerable Witnesses Deposition Centres (VWDC) Scheme, 2022. This scheme is made applicable to all the criminal courts which are of lower parameter than high court. Sec. 4 of the Scheme highlights that every vulnerable witness has the right to testify in a case unless and until specifically debarred by the court based on certain criteria. As per sec. 14 of the Scheme, court can appoint a facilitator for the purpose of the effective communication with the vulnerable witness. An interpreter, translator or a Child Psychologist can be appointed as a facilitator. The another significant section that needs to be discussed is sec. 16 of the scheme which outlines the provision for the Establishment of the VWDC. It outlines that at least one VWDC should be established in every district court. Sec. 17 has the provision for establishment of the Vulnerable Witness Court Room.

## CONCLUSION

Witnesses often face considerable challenges when attempting to provide evidence in court, as they encounter threats, intimidation, and pressure to conceal the truth or withdraw from the case altogether. This becomes especially significant for vulnerable witnesses, who play a crucial role in presenting core evidence yet often confront additional hurdles. Vulnerable witnesses are not limited to children; the term also includes individuals with mental disabilities and others who may struggle to testify under pressure. Despite this, there is a common misconception that vulnerable witnesses are synonymous with child witnesses, overlooking the broader range of individuals who fall under this category. In society, vulnerable witnesses are particularly susceptible to manipulation and coercion due to their unique challenges. It is therefore essential to support these individuals, helping them overcome obstacles through encouragement and empowerment. By fostering their resilience and courage, society can help them contribute effectively to the justice process, ultimately strengthening efforts to hold perpetrators accountab

## REFERENCES

- Dr. Abhishek Atrey, *Law of Witness: Role of Witness in Criminal Justice System and the Need for Reform* 248 (Kamal Publishers, Allahabad, 4<sup>th</sup> edn., 2024)
- Dr. Shashikant Tripathi, *Criminal Justice System and Witness Protection: Laws, Provisions and Procedure* 112 (Routledge, Allahabad, 4<sup>th</sup> edn., 2021)
- SC Expands the Definition of Vulnerable Witness: Directs HCs to Frame vulnerable Witness Deposition Scheme, *available at*: <https://www.livelaw.in/top-stories/supreme-court-vulnerable-witnesses-definition-vwdc-recording-of-evidence> (last visited on Jan. 19, 2024)