



Need for a Dedicated Witness Protection Law

For Prelims: [Supreme Court](#), Witness Protection Scheme 2018, [District and Sessions Judge](#), [Corporate Social Responsibility \(CSR\)](#), [Article 142](#), [United Nations Office on Drugs and Crime \(UNODC\)](#), [Malimath Committee \(2003\)](#), [Whistle Blowers Protection Act, 2011](#), [Right to be Forgotten](#).

For Mains: Need of a dedicated witness protection law for smooth function functioning of the criminal justice system.

Source: [PTI](#)

Why in News?

Recently, the [Supreme Court](#) expressed concern over the **lack of effective implementation** of the **Witness Protection Scheme, 2018**, highlighting the need for a **dedicated witness protection law**.

- The court made its observations while ordering a [CBI](#) enquiry in a case, in which the petitioner had **denied filing an appeal** and claimed that he had never hired any of the lawyers present in the court.

What are the Key Facts About the Witness Protection Scheme 2018?

- **About the Scheme:** It is a legal framework developed by the **Ministry of Home Affairs** to protect witnesses involved in criminal cases.
 - It was approved by the **Supreme Court** and became the **first-ever scheme** aimed at safeguarding witnesses from intimidation, threats, or harm.
 - Protection measures include **changing the witness's identity, relocation, installing security devices**, and using specially designed courtrooms to safeguard witnesses during trials.
- **Definition of a Witness:** A witness is a person who provides **evidence or deposes** before a judicial tribunal.
 - Witnesses are crucial for the **criminal justice system** to function smoothly, and they must provide testimony freely and fairly.
 - The term "**witness**" is **not specifically defined** in the **Criminal Procedure Code, 1973 (CrPC or [Bharatiya Nagarik Suraksha Sanhita](#))**, but courts can summon anyone as a witness if their evidence is essential for deciding a case.
 - SC in **Ritesh Sinha vs State of UP Case** said that **being a witness**, in its ordinary grammatical sense, **means giving oral testimony in court**.
- **Categories of Witness:** The scheme identifies **three categories** of witnesses as per the **Threat Analysis Report (TAR)**.
 - **Category 'A':** Threat extends to the **life of** a witness or his family members.
 - **Category 'B':** Threat extends to **safety, reputation, property** of witness or his family members.

- **Category 'C'**: Threat is moderate and extends to **harassment or intimidation** of the witness or his family member's reputation or property.
- **Aims and Objectives of the Scheme**: The main objective is to ensure that witnesses are **not intimidated or frightened**, which could prejudice the investigation, prosecution, or trial of criminal offences.
 - It aims to promote law enforcement by helping the justice system function without **undue interference or threats** to witnesses.
- **Competent Authority for Witness Protection**: The **Competent Authority** is a **Standing Committee** established in each district, chaired by the **District and Sessions Judge**, with the District Police Head and the District Prosecutor as members.
 - This committee is responsible for **overseeing witness protection** measures in its jurisdiction.
- **State Witness Protection Fund**: A **State Witness Protection Fund** has been established to cover expenses incurred in implementing protection orders.
 - Funding sources include budgetary allocations, court fines, donations, and contributions from organisations under **Corporate Social Responsibility (CSR)** initiatives.
- **Types of Protection Measures**: Protection measures depend on the **threat level and are reviewed regularly**.
 - **Preventing face-to-face contact** between the witness and accused during the investigation or trial.
 - **Changing the witness's phone number** or installing **security devices** at their residence.
 - Concealing the witness's identity, providing escorts, **in-camera trials**, and holding trials in specially designed courtrooms.
 - Other specific protection measures can be requested by the witness or deemed necessary by the **Competent Authority**.
- **Review and Recovery of Expenses**: If a witness has lodged a **false complaint**, the State government may **recover the expenses** incurred for their protection.
- **Endorsement by the Supreme Court**: The Supreme Court, in **Mahender Chawla & Ors. v. Union of India & Ors. Case, 2018**, endorsed the Witness Protection Scheme and directed that it be **implemented by all States and Union Territories**.
 - The court ruled that the scheme should be considered **"law" under Articles 141 and 142 of the Constitution** until formal legislation is enacted.
 - **Article 141** states that the law declared by the Supreme Court shall be **binding on all courts** within the territory of India.
 - **Article 142** gives the Supreme Court the **power to pass orders or decrees** to ensure **complete justice** in any case or matter before it.

Why is the Witness Protection Scheme Ineffective?

- **Narrow Definition of Protected Offences**: The scheme **limits** protection to witnesses of crimes punishable by **death or life imprisonment** and specific crimes against women.
 - It excludes many other crimes that may pose significant risks to witnesses, thereby undermining the scheme's intent.
- **Issues with Witness Categorisation**: **Categorisation** of Witness into Category A (direct threat), Category B (threat to safety), and Category C (moderate threat) **lacks objective criteria** and relies on the subjective judgement of law enforcement officials, which may **not accurately reflect the true level of threat**.
- **Threat Assessment Report Concerns**: There is a **disconnect** between the threat perceptions of trained police officers and the **lived realities of ordinary citizens**, which can lead to underestimating the threats faced by witnesses.
- **Confidentiality of Witness Information**: The scheme fails to provide an enforcement mechanism to protect against **breaches of confidentiality**. The **porous nature** of the Indian legal system increases the risks of leaks, placing witnesses in precarious situations.
- **Comparison with International Standards**: International frameworks, including those by the **United Nations Office on Drugs and Crime (UNODC)**, stress **comprehensive assessments** of witnesses, considering their psychological fitness and the significance of their testimony.
 - The Indian scheme's **focus solely on threats** overlooks the critical aspect of risk

assessment.

What is the Need of a Dedicated Witness Protection Law?

- **Witnesses as the "Eyes and Ears of Justice":** English philosopher and jurist Jeremy Bentham famously remarked that "**witnesses are the eyes and ears of justice**".
 - The absence of legal obligations on the part of the State to protect witnesses leads to their reluctance in cooperating with the justice system.
- **Supreme Court Observations:** In the *State of Gujarat vs. Anirudh Singh case of 1997*, the **Supreme Court** held that it is the statutory duty of every witness who has knowledge of a crime to assist the State by providing evidence.
 - In the *Zahira Habibulla H. Shiekh vs. State of Gujarat case 2004*, the SC stated that fair trials are compromised if witnesses are threatened or forced to give false evidence.
- **Committee Recommendations:** The [Malimath Committee \(2003\)](#) on criminal justice reform reiterated that giving evidence is a **sacred duty**, as it helps the court discover the truth.
 - The **4th National Police Commission Report 1980** noted that witnesses often turn hostile under pressure from the accused, highlighting the urgent need for a strong witness protection law to preserve the **integrity of the justice system**.
- **Law Commission Reports: 154th, 178th, and 198th [Law Commission Reports](#)** discussed the witness protection issue and recommended the establishment of formal witness protection programs.
 - The 198th Report was specifically dedicated to **Witness Identity Protection and Witness Protection Programs 2006**.
- **Insufficient Protection: Section 195A of the Indian Penal Code ([Bharatiya Nyay Sanhita](#)), [Juvenile Justice Act \(2015\)](#), [POCSO Act \(2012\)](#), and [Whistle Blowers Protection Act, 2011](#)** provide safeguards for witnesses but are proved insufficient over time.
- **Extremism and Organised Crime:** The rise of extremism, terrorism, and organised crime has increased the need for witness protection, as their cooperation is crucial for law enforcement.

Conclusion

The inadequacy of witness protection measures in India is acknowledged. The Witness Protection Scheme 2018 is a **step forward but in early stages**. A **tiered model** with specialised units can enhance effectiveness. Integrating the [right to be forgotten](#) can protect witnesses' personal information, ensuring their rights and safety in the judicial process. Based on this a comprehensive witness protection law should be framed to uphold the integrity of the judicial process.

Drishti Mains Question:

Critically analyse the limitations of the Witness Protection Scheme, 2018 and account for the need of a dedicated witness protection law.