



## Witness Protection Scheme, 2018

The Supreme Court (SC) has approved **India's First Witness Protection Scheme** drafted by the union government and has asked the Centre, states and Union Territories to enforce" it in letter and spirit.

- The Scheme was drawn up by the Centre in 2018 with inputs from states/Union Territories, National Legal Services Authorities, civil society, High Courts and police personnel.
- The aim and objective of the scheme are **to ensure that the investigation, prosecution, and trial of criminal offenses is not prejudiced because witnesses are intimidated or frightened to give evidence without protection from violent or other criminal recrimination.**

### Background

- The SC in **State of Gujrat v. Anirudh Singh (1997)** held that it is the **salutary duty of every witness** who has the knowledge of the commission of the crime, **to assist the State in giving evidence.**
- First ever reference to Witness Protection in India came in **14th Law Commission Report in 1958. After that 154th, 178th and 198th Law Commission Report also recommended putting in place a witness protection scheme.**
- **Malimath Committee Report** also batted for a **strong witness protection mechanism** and said that the courts should be ready to step in if the witness is harassed during cross-examination.

### Reasons For Witness Turning Hostile

- The court has noted the following **reasons for witness turning hostile** during the trial:
  - Threat/Intimidation.
  - Inducement by various means.
  - Use of muscle and money power by the accused.
  - Use of stock witnesses (a few alleged witnesses, who depose falsely in favor of the prosecution as and when called).
  - Protracted trials.
  - Hassles faced by the witnesses during investigation and trial.
  - The non-existence of any clear-cut legislation to check hostility of witness

### SC Judgement

- SC held that the **Right of witnesses to testify freely in courts is part of Article 21 (Right to Life).**
- The court said that the **scheme will be the law under Article 141/142 of the Constitution,** until the enactment of suitable Parliamentary and/or State Legislations on the subject.
- The bench has also asked all states and Union Territories **to set up vulnerable witness deposition complexes,** as required by the Scheme, by the end of 2019. These rooms will be equipped with facilities to prevent the accused and witness coming face to face.

## Witness Protection Scheme, 2018

- The programme identifies **three categories of witnesses** as per threat perception:
  - **Category A:** Those cases where threat extends to the life of witness or family members during the investigation, trial or even thereafter.
  - **Category B:** Those cases where the threat extends to safety, reputation or property of the witness or family members during the investigation or trial.
  - **Category C:** Cases where the threat is moderate and extends to harassment or intimidation of the witness or his family members, reputation or property during the investigation, trial or thereafter.
- **Witness Protection Fund**
  - The expenses for the programme will be met from a **Witness Protection Fund to be established by States and Union Territories.**
  - The states will make annual budgetary allocation for the fund.
  - Fund will also be free to accept donations from national and international philanthropic organizations and amounts contributed as part of Corporate Social Responsibility.
  - The said Fund will be operated by the **Department/Ministry of Home under the State/UT Government.**
- **Threat Analysis Report (TAR)**
  - The Witness Protection Scheme, 2018 calls for preparation of a **'Threat Analysis Report' of the witness by the Commissioner/SSP**, when witness applies for protection.
  - TAR will categorize on the level of threat perception and will submit suggestions.
  - The Witness Protection Order passed by the Competent Authority will be **implemented by the Witness Protection Cell of the State/UT.**
  - It provides for protective measures like ensuring that the **witness and accused do not come face to face during the probe, protection of identity, change of identity, relocation of witnesses, witnesses to be apprised of the scheme, confidentiality, and preservation of records, recovery of expenses etc.**
- **Change of Identity**
  - In appropriate cases, where there is a request from the witness for the change of identity and based on the threat perception by the Commissioner of Police in Commissionerates/SSP in District Police investigating the case, a decision can be taken for conferring a new identity to the witness by the Competent Authority.
  - Conferring new identities **includes new name/profession/parentage** and providing supporting **documents acceptable by the Government Agencies.**

## Way Forward

- In words of Jeremy Bentham, **"Witnesses are eyes and ears of justice"**. This scheme is a step in the right direction in ensuring the confidence of witnesses in trusting the criminal justice system of the nation.