

Witness Protection Scheme [Mains Article]

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Introduction:

The Supreme Court approved India's first Witness Protection Scheme, noting that one of the main reasons for witnesses to turn hostile is that they are not accorded appropriate protection by the State.

Who is called a 'Witness'?



- “Witness” refers to any person, who possesses information or document about any crime regarded by the competent authority as being material to any Criminal proceedings and who has made a statement, or who has given or agreed or is required to give evidence in relation to such proceedings.

Background:

- The Witness Protection Scheme, 2018 has been approved by the Supreme Court in its landmark judgement of Mahendra Chawla v. Union of India, making it the first attempt to bring the protection of witness under the ambit of law and putting the responsibility on the State to implement it effectively.
- This ruling comes in the context of a number of cases of fatal attacks suffered by witnesses in the past.

Need of this scheme:

In cases involving influential people, witnesses turn hostile because of threat to life and property as they find that there is no legal obligation by the state for extending any security.



- In the investigation and prosecution of crime, particularly the more serious and complex forms of organized crime, it is essential that witnesses, the cornerstones for successful investigation and prosecution, have trust in criminal justice system.
- A witness is one of the indispensable parts of the criminal justice system, as his stand determines the very backbone of the decision of the case. Therefore, the truthfulness of the witness's testimony becomes the cornerstone of justice and hence the witness is made to offer statement under oath.
- A witness must depose without force, fear and pressure and out of his or her own free will and consent. The quality of the statements given by a witness also determines the pace of a particular case.
- Witnesses need to have the confidence to come forward to assist law enforcement and prosecutorial authorities.
- They need to be assured that they will receive support and protection from intimidation and the harm that criminal groups may seek to inflict upon them in attempts to discourage or punish them from co-operating.
- In any criminal case, the witness plays a pivotal role in determining the final outcome. Due to this, the parties often threaten the witnesses, turning them hostile and interfering with the fair administration of justice. If one is unable to testify in courts due to threats or other pressures, then it is a clear violation of Article 21 of the Constitution.
- Hence, legislative measures to emphasize prohibition against tampering of witnesses have become the imminent and inevitable need of the day.
- The need for Witness Protection scheme had been envisaged by various reports of the Law Commission of India and the Malimath Committee.
- The 14th Law Commission Report was the first ever instance where the issue of witness protection was brought forth.
- Further, the 154th Report dealt with the plight of the witnesses.

- The 172nd and 178th Report laid emphasis on protection of witness from the wrath of the accused.
- The NN Vohra Committee Report, 1993 said Criminalisation of Indian Polity is striking the very foundation.
- The Criminal Law (Amendment) Act, 2005 has made many important amendments such as threatening any person to give false evidence is made punishable.

Sadly, India still lacks a well-functioning witness protection programme despite various attempts to improve it.

Witness protection schemes around the world:

- There is no definition as to who constitutes a witness even in international law, although the need for setting up separate victim and witness protection units in the trial of mass crimes has been recognised in many international tribunals.
- The 'International Criminal Tribunal for Rwanda' has formulated rules for protection of victims and witnesses. Similar provisions exist in the Statute for the creation of an International Criminal Court.
- The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power was adopted by the United Nations General Assembly in November 1985.
- Article 14 of the **International Covenant on Civil and Political Rights, which India has ratified**, recognizes the right to fair trial as a human right.

Reasons for Witness Turning Hostile:

- Threat to lives
- Political Pressure
- Luring of witness by various means
- Self-generated fear of police
- Absence of fear of the law of perjury
- Incorrect statement recorded by police
- Slow working of the judicial process

About the scheme:

The question of protection for witnesses in cases involving influential people sought the Witness Protection Scheme.

Witness Protection Scheme framed by Centre

- The witness protection measures shall be proportional to the threat
- Steps to be taken to ensure that witness and accused do not come face to face during investigation or trial
- Mail and telephone call to witness to be monitored
- Arrangement to be made to provide unlisted telephone number to witness
- Security devices like CCTV camera, alarms to be installed at residence of witness
- Close protection and regular patrolling around witness's house
- Witness to be escorted to and from court in



government vehicle

- Ensuring expeditious recording of deposition on day to day basis without adjournment in trial proceedings
- Holding of in-camera trials and concealing identity of witness by referring her with changed name

- The scheme was drawn up by the central government with inputs from 8 states/Union Territories, legal services authorities of five states and open sources including civil society, three high courts as well as from police personnel.
- The scheme was finalised in consultation with National Legal Services Authority (NALSA).

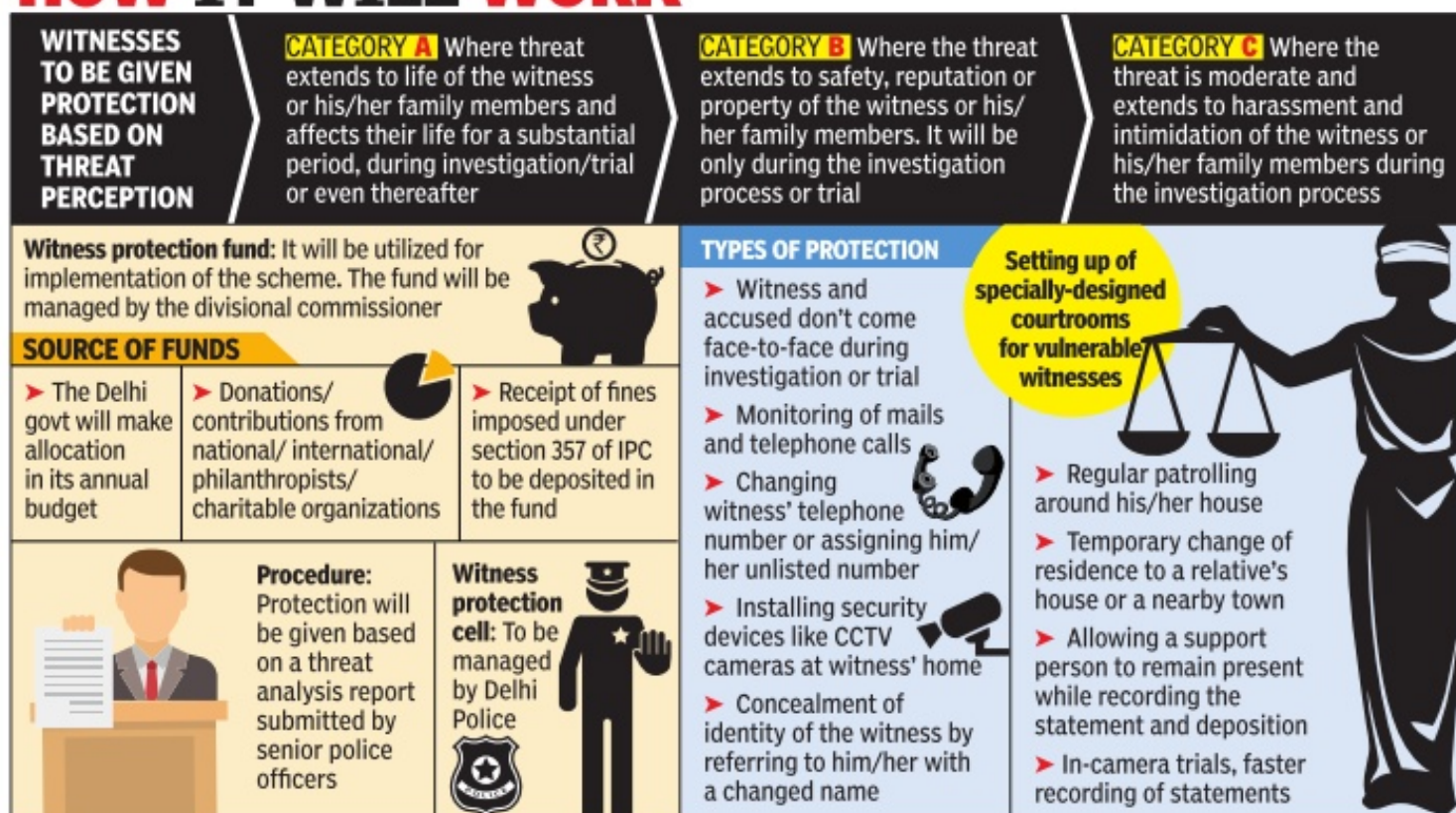
Objectives of the Scheme:

- To ensure that the investigation, prosecution and trial of criminal offences is not prejudiced because witnesses are intimidated or frightened to give evidence without protection from violent or

other criminal recrimination.

- To promote law enforcement by facilitating the protection of persons who are involved directly or indirectly in providing assistance to criminal law enforcement agencies and overall administration of Justice.
- Witnesses need to be given the confidence to come forward to assist law enforcement and Judicial Authorities with full assurance of safety.
- To identify series of measures that may be adopted to safeguard witnesses and their family members from intimidation and threats against their lives, reputation and property.

HOW IT WILL WORK

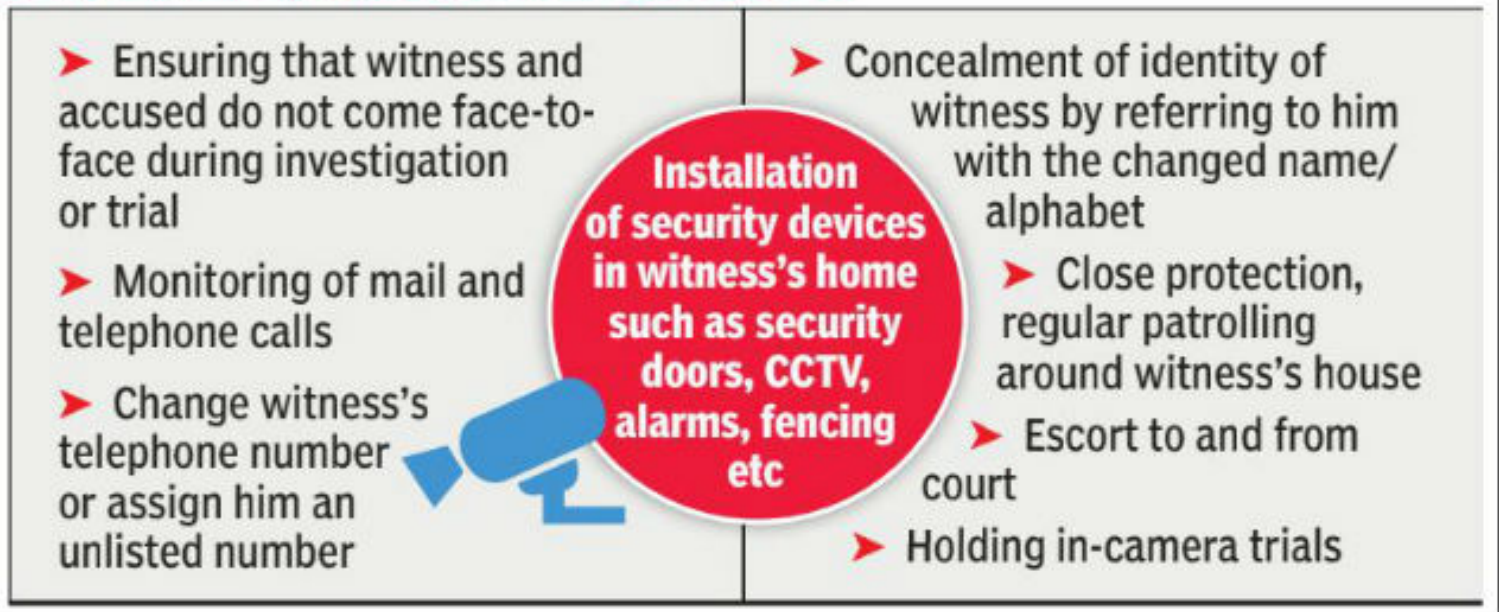


Rights of Witnesses:

Witnesses should be entitled to the following rights:

- Right to give evidence anonymously
- Right to protection from intimidation and harm
- Right to be treated with dignity and compassion and respect of privacy
- Right to information of the status of the investigation and prosecution of the crime
- Right to secure waiting place while at Court proceedings
- Right to transportation and lodging arrangements

PROTECTION MEASURES



Salient Features of the Scheme:

- Identifying categories of threat perceptions
- Preparation of a 'Threat Analysis Report' by the head of the police
- Ensuring that the witness and accused do not come face to face during probe
- Protection of identity
- Protective measures like change of identity, relocation of witness, witnesses to be apprised of the scheme, confidentiality and preservation of records, recovery of expenses etc.

The programme identifies "three categories of witnesses as per threat perception":

- **Category A:** Those cases where threat extends to life of witness or family members during 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.

Drawbacks in the scheme:

Even though the scheme offers a great deal of respite to the witnesses regarding their safety during the continuance of the trial and in exceptional cases even after the trial is complete, it also suffers from certain flaws such as:

- The functioning criminal justice system is the responsibility of the State and some states may not have adequate resources to implement this scheme effectively. The alternative to this is assistance by the centre but nowhere in the scheme the centre has been entitled to give in a single penny for the Witness Protection Fund.
- The functioning of the Witness Protection Order has been made limited only to three months.

- The task of deciding the contents and preparation of the Threat Analysis Report has been accorded to the head of the police in the district. So, in high profile cases involving politicians or influential people, the police officer can be put under pressure to provide those people the information regarding the witness.

About Witness Protection Fund:

Under the scheme, there shall be a Witness Protection Fund operated by the Ministry or Department of Home Affairs under the State or Union Territory, from which the expenses of implementation of the Witness Protection Order have to be met.

The fund is to be maintained by the States and Union Territories and shall comprise of:

- Budgetary allocation made by the Annual Budget presented by the State Government.
- Receipts of fines imposed under Section 357 of Code of Criminal Procedure ordered to be deposited by the courts.
- Donations and contributions from various charitable trust, philanthropist and individual permitted by the Government.
- Funds contributed under Corporate Social Responsibility.

Suggestions:



- Protection may be given before, during and/ or after the judicial proceeding depending on the type of the witness or the degree of co-operation.
- Effective witness protection legislation, should ideally involve all the three concerned agencies – police, government and judiciary.
- The government should display a political will to implement necessary Acts, the judiciary can look into the legal aspects and the execution may be entrusted to the police.
- An independent witness protection cell should be constituted and it must arrange for the provision of false identities, relocation and follow up.
- The witnesses should be treated with fairness, respect, and dignity, and to be free from

intimidation, harassment, or abuse, throughout the criminal justice process.

- They should have access to information of the status of the investigation and prosecution of crime.
- Medical facilities, social services, state compensation, counselling, treatment and other support may be provided.
- Right to a speedy trial and prompt and final conclusion of the case after the conviction and sentence must also be ensured.
- The police force should be given the freedom to take basic measures to protect witnesses like surveillance, escorting the witness to work and court, assisting with emergency relocation etc.
- Measures should be taken by the courts to restrict public access to the witness's identity including having a witness testify under a pseudonym.
- The use of practices such as videoconferencing, teleconferencing, voice and face distortion, and other similar techniques must be encouraged as well as allowing witnesses to conceal their address or occupation.
- The witnesses should be assured that those who want to testify have, on their side, the police and an impartial system.

Conclusion/Way ahead:

- The tools under the Criminal Procedure code are not properly used in a trial court at the stage of inquiry, trial and other proceedings or in the summoning of witnesses, their examination, cross examination and re-examination.
- The judge, in his anxiety to maintain neutrality never takes an initiative to discover the truth and he relies on the excuse that ours is an adversarial system which does not impose a positive duty on the judge to discover truth.
- Law is a means to achieve an end, and that is justice. If this end is to be achieved law cannot remain stagnant and must change according to the transition of the society.
- No nation may afford to expose its righteous and morally elated citizens to the peril of being haunted or harassed by anti-social elements, for the simple reason that they testified the truth in a court of law.

[Ref: The Hindu, Indian Express, NALSA]