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## Mains Practice Questions

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**Q.** Examine the need and challenges related to Witness Protection Scheme. (150 words)

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### **Approach**

- Write important features of witness protection scheme in introduction.
- Examine the need and challenges related to the scheme in body part.
- In way forward suggest future action which can reduce the witness plight.

### **Introduction**

- Witness Protection 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).
- The important features of the Witness Protection Scheme, 2018 include identifying categories of threat perceptions, preparation of a 'Threat Analysis Report' by the head of the police, protective measures like ensuring that the witness and accused do not come face to face during probe, protection of identity, change of identity, relocation of witness, witnesses to be apprised of the scheme, confidentiality and preservation of records, recovery of expenses etc.

### **Body**

#### **The need for Witness Protection Scheme:**

- In a society governed by a Rule of Law, it is imperative to ensure that investigation, prosecution and trial of criminal offences is not prejudiced because of threats or intimidation to witnesses.
- Victims and witnesses of serious crimes are particularly at risk when the perpetrator is powerful, influential, or rich and the victims or witnesses belong to a socially or economically marginalised community. Girls and women who report sexual violence are often even more vulnerable and face extreme pressure or direct threats from the accused.
- Witnesses need to have the confidence to come forward to assist law enforcement and prosecutorial authorities.
- The need to protect witnesses has been emphasised by the Supreme Court of India in "Zahira Habibulla H. Sheikh and Another v. State of Gujarat" 2004. While defining Fair Trial, the Supreme Court observed that "If the witnesses get threatened or are forced to give false evidence that also would not result in fair trial".
- In 154th Report (1996) The Law Commission dealt with the plight of the witnesses. The report spelt out the inconvenience and the lack of facilities and the threat from the accused to the witnesses.

## **Challenges related to Witness Protection Scheme:**

- The draft scheme does not seem to be premised on any empirical study and, therefore, the deeper insights about the varied sufferings and consequences of being a witness remain unaddressed.
- The scheme relies heavily on concealing the identity of witnesses and undertaking a detailed threat analysis report, to be prepared by the police. Given the way the police and prosecution work in our country, the idea of hiding the identity of a witness as a measure of protection does not seem to be practical.
- Overworked and understaffed, the police are also unlikely to make any meaningful threat analysis for a witness. A police force which roughly devotes only 20 per cent of its time to investigative work would be justifiably right in avoiding this task.
- The lower courts, where all the witnesses have to appear, do not have the infrastructure to satisfy the mandate of the present scheme. Nor can they do much to avoid contact between the witness and the accused. The in-camera trial arrangements in all such cases also have the same issue. The most problematic and unrealistic factors in this scheme are the arrangements to change identity and relocate witnesses.

## **Way forward**

- A study conducted by this author based on 800 witnesses in the premises of some of the high Court clearly revealed that a vast majority of witnesses do not need protection — they require more assistance, care and dignity.
- The major source of harassment for the witnesses stemmed from the frequent adjournment of cases, which was confirmed by 65 per cent witnesses in the said study.
- Thus, the need is a “Witness Assistance Programme” which can bring a complete shift in focus to make it rights-based rather than security-centric.