



Witness Protection Scheme 2018

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Why in News?

- The Supreme Court on December 5, approved the Witness Protection Scheme 2018 which aimed at enabling a witness to depose fearlessly and truthfully.
- While the scheme is pending in the Parliament, the Supreme Court has ordered to imply the scheme immediately in all the states and the scheme would be the law of the land.

Supreme Court 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 of India.
- The bench has also asked all States and UTs to set up **vulnerable witness deposition complexes**, these rooms will be equipped with facilities to prevent the accused and witness coming face to face.

Articles 141 and 142

- **Article 141:** The law declared by the Supreme Court shall be binding on all courts within the territory of India.
- **Article 142 (1):** The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree so passed or orders so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, in such manner as the President may by order prescribe.
- **Article 142 (2):** Subject to the provisions of any law made in this behalf by Parliament, the Supreme Court shall, as respects the whole of the territory of India, have all and

every power to make any order for the purpose of securing the attendance of any person, the discovery or production of any documents, or the investigation or punishment of any contempt of itself.

Background

- Asumal Sirumalani Harpalani, known as Asaram Bapu by his followers, a religious leader, was convicted by the Rajasthan High Court under rape case.
- As the cases went through courts, three witnesses were killed and others were attacked or threatened.
- The issue came up when the Supreme Court was hearing public interest litigation (PIL) plea seeking protection for witnesses in Asaram Bapu rape cases.
- The Bench said witnesses feared serious consequences if they deposed against Asaram.

Why the Witness Protection Scheme?

- The need to protect witnesses has been emphasized by Law Commission reports and court judgments for years.
- Such as the **State of Gujarat v. Anirudh Singh (1997)**, **14th Law Commission Report** and **Malimath Committee Report** has recommended for witness protection scheme.
- 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 marginalized community.
- Girls and women who report sexual violence are often even more vulnerable and face extreme pressure or direct threats from the accused.
- Also, 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.
- Until now, there have been ad hoc steps such as few dedicated courtrooms for vulnerable witnesses mostly child victims and concealing the identity of witnesses in anti-terrorism etc have been unsuccessful to prevent witnesses.
- Hence, legislative measures to emphasize prohibition against tampering of witnesses have become the imminent and inevitable need of the day.

- The scheme is India's first Witness Protection Scheme, aimed at providing appropriate protection to the witnesses by the State.
- The draft witness protection scheme has been finalized in consultation with the **National Legal Services Authority (NALSA)** and **Bureau of Police Research and**

Development (BPRD).

- The scheme shall extend to the whole of India except the State of Jammu & Kashmir.
- The scheme 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.
- The scheme provides for **Witness Protection Fund:**
 - The expenses for the programme will be met from this fund.
 - The states will make annual budgetary allocation for the fund.
 - It will be established and operated by the Department/Ministry of Home under States and Union Territories.
- The scheme calls for preparation of a '**Threat Analysis Report**' of the witness by the Commissioner/SSP when witness applies for protection.
- **The Witness Protection Order**
 - It is an order passed by the **Competent Authority** and it will be implemented by the **Witness Protection Cell** of the State/UT.
 - The Competent Authority is the one who is empowered under the Scheme to pass orders for the protection of the witness such as, **Secretary District Legal Services Authority(DLSA)**.
- **Witness Protection Application and process:**
 - An application can be filed for seeking protection order under this scheme.
 - Competent Authority passes an order for Threat Analysis Report after receiving the application.
 - The Commissioner of Police in Commissionerates/ SSP in District Police investigating the case shall categorize the threat.
 - An application shall be disposed of within five working days of receipt of Threat Analysis Report.
- **Change of Identity** in appropriate cases, where there is a request from the witness for the change of identity.
- **Types of Protection measures** includes providing a police escort to the witness up to the courtroom, in more complex cases taking extraordinary measures such as offering temporary residence in a safe house, giving a new identity, and relocation at an undisclosed place and also measures such as close protection, regular patrolling around the witness's house.

The Significance of the Witness Protection Scheme

- This scheme attempts to ensure that witnesses receive appropriate and adequate

protection.

- Through this scheme, it would result in providing support to the threatened and vulnerable witnesses and gain their confidence in delivering information for justice.
- Facilities such as camera trial, proximate physical protection and anonymizing of testimony and references to witnesses in the records would provide better protection.
- It will also strengthen the criminal justice system in the country and will consequently enhance National Security Scenario.

Challenges

- The witness protection programme will pose logistical and financial challenges.
- Invariance with the Law Commission's recommendation, the scheme is to be funded by budgetary support from State governments and donations.
- Change of Identity needs to be done without undermining the witness professional and property rights and educational qualifications.

Way Forward

The witnesses are "eyes and ears of justice", and this scheme is a step in the right direction towards the effective justice delivery system of the nation.