

A LAW FOR THOSE WHO TESTIFY**Context:**

- ▶▶ The recent accident in Rae Bareilly in which a rape survivor's two aunts died, and which left her and her lawyer in a critical condition has drawn back the issue of witness protection again into attention.

Background:

- ▶▶ In 2017, in the Asaram Bapu case concerning the rape of some women devotees, three witnesses were killed and as many as 10 attacked in an attempt to weaken the case.
- ▶▶ It was the killing of the three, followed by a Public Interest Litigation, which prompted the apex court to issue directions to the Centre and the States to frame laws for protection of witnesses.
- ▶▶ Following this, Maharashtra came out with the Maharashtra Witness and Protection and Security Act 2017, which was notified in January 2018. However, the Centre, and most other States, are yet to act on the directive.
- ▶▶ Meanwhile, the apex court gave its assent last year to the Witness Protection Scheme, which was drafted by the Centre in consultation with the Bureau of Police Research and Development (BPRD) and the National Legal Services Authority (NALSA).
- ▶▶ The Centre was to implement the scheme after circulating it among all States and Union Territories and obtaining their comments. However, the scheme was meant to be a measure in force only till the government brought out its own law on the issue.
- ▶▶ Though the Centre is scheduled to bring an Act on the subject by the end of this year, it has not made much progress.

Need of Witness protection Scheme:**1. To protect 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, as Human Rights Watch found in its report "Everyone Blames Me".

2. To ensure rule of Law:

- ❖ It is a rule of law that no rights of the witness should be prejudiced by way of threats, intimidation or corruption therefore, to allow him to testify for or against the case which he had been a witness to with full liberty.

3. Rights of the witnesses:

- ❖ It is the responsibility of the State to impart adequate protection to the witness. This would encourage more witness to come forward.

Recommendations Favouring Bill:

- ▶▶ First reference to Witness Protection in India came in 14th Law Commission Report in 1958. After that 178th and 198th Law Commission Report also recommended putting in place a witness protection scheme.
- ▶▶ The 198th report of Law Commission various aspects such as Witness Identity Protection, Rights of accused and based on this Witness protection bill, 2015 was introduced.
- ▶▶ In 2003, Justice V Malimath Committee on criminal justice system had recommended enacting a separate witness protection law and in 2006, the Law Commission of India, in its 198th report, provided for a draft witness protection law.
- ▶▶ In 2003, best bakery case, the Supreme court directed the government to report the steps taken for witness protection.
- ▶▶ In 2018, Mahendra chawla vs Union of India case , Supreme court directed the state to implement Witness protection scheme 2018 till the parliament brings law in this regards.

Witness Protection Scheme, 2018:

Definition of Witness:

- ▶▶ The Witness Protection Scheme, 2018 defines 'witness' as: 'Witness' means 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.'

Highlights of the draft scheme:

- ▶▶ It has three categories of witnesses based on the threat perception:
 - ❖ **Category 'A'**: Where the threat extends to life of witness or his family members and their normal way of living is affected for a substantial period, during investigation/trial or even thereafter.
 - ❖ **Category 'B'**: Where the threat extends to safety, reputation or property of the witness or his family members, only during the investigation process or trial.

❖ **Category ‘C’:** Where the threat is moderate and extends to harassment or intimidation of the witness or his family member’s, reputation or property, during the investigation process.

- ▶▶ The draft witness protection scheme has been finalised in consultation with the National Legal Services Authority (NALSA) and Bureau of Police Research and Development (BPRD).
- ▶▶ The types of protection measures envisaged under the scheme are to be applied in proportion to the threat and they are not expected to go on for infinite time.
- ▶▶ The scheme envisages that there should be safeguards that witnesses and accused do not come face to face during investigation or trial and adequate security measures should be there for the safety of the witnesses.
- ▶▶ The scheme provides for identity protection and giving a new identity to the witness.
- ▶▶ The scheme shall extend to the whole of the India except the State of Jammu & Kashmir.
- ▶▶ As per the scheme, police escort will be provided to witnesses who are threatened and, if needed, they would be relocated to a safe house.
- ▶▶ The scheme also says mails and phone calls of the witnesses would be monitored to trace the person threatening them.
- ▶▶ It said a separate witness protection fund will be created in each state to meet the expenses incurred under the scheme.
- ▶▶ Witness deposition complexes will be set up in all district courts by the states and union territories within a year where the witnesses could fearlessly depose against the high and mighty without coming face-to-face with the accused.

Issues with Witness Protection Scheme:

1. The functioning criminal justice system is the responsibility of the State and some states may not have adequate resources to implement this scheme effectively.
2. The lower courts, where all the witnesses have to appear, do not have the infrastructure to satisfy the mandate of the present WPS.
3. Overworked and understaffed police are unlikely to make any meaningful threat analysis for a witness.
4. Also, 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.
5. The arrangements to change identity and relocate witnesses may not fit Indian conditions.
6. Scheme not addressed the harassment of the witnesses from the frequent adjournment of cases, monetary loss and other kinds of deprivation due to their repeated appearances in the court

7. It doesn't address the social reality of witnesses. Most crimes in India take place amongst people known or related to each other and, consequently, the witnesses also share some relationship with both the victim and the accused. Thus, it casts tremendous pressure on the witness, generally of a social or caste-related nature.

Lax implementation:

- ▶▶ The objective of the existing measure is to ensure the safety of witnesses, so that they are able to give a true account of the crime without any fear of violence or criminal recrimination, its implementation on the ground leaves much to be desired.
- ▶▶ The Unnao matter would have been hushed up but for the fact that the survivor attempted to immolate herself in front of the Chief Minister's residence.
- ▶▶ Though the scheme provides for police personnel to be deployed to protect the witness on the basis of threat perception, it is silent on the punishment to be given to those policemen who, while being charged with providing security, themselves threaten the witnesses.
- ▶▶ The criminals is emboldened the most due to the support they get from the police.
- ▶▶ The shadowy politician-police nexus is so strong that no policeman, at the mercy of political leaders for his career progression, dares take any action against his 'master'.
- ▶▶ As long as this nexus continues, the delivery of criminal justice in India will remain a casualty.

Conclusion:

- ▶▶ The Witness Protection Scheme, 2018 (Draft) is a first attempt at the National level to holistically provide for the protection of the witnesses which will go a long way in eliminating secondary victimization. But few steps need to take to make it more effective.
- ▶▶ 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.
- ▶▶ Government must enact a comprehensive legislative which clearly defines the role of Police, government and judiciary. There is a need to make Witness protection scheme more right based rather than security centric.
- ▶▶ Along with Witness protection scheme there is need of "Witness Assistance Programme" as a vast majority of witnesses do not need protection, they require more assistance, care and dignity. The Witness Protection Scheme calls for more elaborate and stricter laws to be incorporated so that criminals find no loopholes that can be exploited to their advantage.
- ▶▶ The sooner the Centre comes up with a legislation codifying the protection to be given to witnesses, the better it is for India's criminal justice system.

Source: The Hindu