



REFERENCE NOTE

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WITNESS PROTECTION SCHEME 2018

10 mins read

At a Glance

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1. Introduction

In the Criminal Justice System, witnesses and their testimonies play a decisive role in reaching the conclusion of the case. Witnesses, being the most crucial participants in the procedure, are often threatened or induced by the parties involved in the case to change or retract their statements. Thus, cases do not reach a truthful and rational conclusion. The judicial machinery fails the victims in their quest for justice. Therefore, protecting the witnesses becomes indispensable for achieving the foremost objective of the Criminal Justice System¹.

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¹ . <https://nslr.in/article/a-proposal-for-a-model-witness-protection-programme-need-and-legal-ramification/>

"Witnesses are eyes and ears of justice."- Jeremy Bentham

https://www.mha.gov.in/sites/default/files/Documents_PoINGuide_finalWPS_08072019.pdf

2. Who is a witness

A witness may be defined as a person who gives evidence or deposes before a judicial tribunal. The term "witness" has not been defined anywhere in the Criminal Procedure Code. Any court, however at any stage of inquiry, trial or other proceeding under the Criminal Procedure Code, can summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine such person if his evidence appears to be essential to the just decision of the case².

3. Importance of witness protection

The primary objective of a criminal justice system is to guard the society against criminal conduct, deter the law-breakers and sanction those who violate or attempt to violate the laws of the land. An effective criminal justice system constitutes methodical investigation in order to identify the course of action leading to the crime. The mechanism of evidence by way of systematic collection and presentation in a court of law, in civil as well as criminal matters, enables the adjudicatory bodies to effectively dispute or prove a fact. This is where the role of a witness comes into play.

Role of a witness

- Witness is vital guide for smooth running of the criminal equity framework, it is necessitated that witnesses come forward and oust their testimony and statement in free and reasonable situation,
- Witness therefore plays a significant role, on which the faith of a case depends,
- Witness is foundation of a trial, regardless of whether it is civil or criminal.

http://www.nja.nic.in/Concluded_Programmes/2020-21/P-1230_PPTs/L.Protection%20of%20Witness%20and%20Victim%20Compensation.pdf

² <https://kslu.karnataka.gov.in/storage/pdf-files/KSLU%20Journals/6.pdf>

4. Witness protection laws in India

It is the civil duty of a witness who stands at a trial to speak nothing but the truth. The protection of a witness from threats to his life or property at various spheres is the duty of the State. Various provisions pertaining to victim assistance and witness protection existed in various statutes however no formal structured programme had been introduced for addressing the issue of witness protection in a holistic manner³.

5. Need and justification of the Scheme

In 1958, the 14th Report of Law Commission indicated about the need to protect witnesses. The 4th Report of the National Police Commission, 1980 also dealt with the said subject. 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. The 172th and 178th report of the Law Commission also dealt with the said subject and recommended that witnesses should be protected from the wrath of the accused in any eventuality. Malimath Committee on Reforms of Criminal Justice System, 2003 said in its report that "by giving evidence relating to the commission of an offence, he performs sacred duty of assisting the court to discover the truth". 198th Report of Law Commission titled as 'Witness Identity Protection and Witness Protection Programme, 2006' is also dedicated to the subject. The need to protect witnesses has been repeatedly emphasised by the Hon'ble Supreme Court of India⁴.

Supreme Court of India Observations

- "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". State of Gujarat V. Anirudh Singh Case (1997)
- "If the witnesses get threatened or are forced to give false evidence that also would not result in fair trial". Zahira Habibulla H. Sheikh and Another v. State of Gujarat Case 2004

https://www.mha.gov.in/sites/default/files/Documents_PoINGuide_finalWPS_08072019.pdf

6. Witness Protection Scheme 2018

The Ministry of Home Affairs prepared "Witness Protection Scheme, 2018" in consultation with the National Legal Service Authority, Bureau of Police Research & Development and the State Governments. Witness Protection Scheme provides for protection of witnesses based on the threat assessment and protection measures *inter alia* includes protection/change of identity of witnesses, their relocation, installation of security devices at the residence of witnesses, usage of specially designed Court rooms, etc.

³ <https://www.ijlmh.com/wp-content/uploads/2019/03/Statutory-Witness-Protection-in-India-A-Cardinal-Urgency.pdf>

⁴ https://www.mha.gov.in/sites/default/files/Documents_PoINGuide_finalWPS_08072019.pdf

The Hon'ble Supreme Court of India in its Judgment dated 05.12.2018 in Mahender Chawla & Ors. v. Union of India & Ors., Writ petition (Criminal) No. 156 of 2016 has endorsed the Scheme. The Hon'ble Supreme Court has also directed that the Union of India as well as States and Union territories shall enforce the Witness Protection Scheme, 2018 in letter and spirit and that it shall be the 'law' under Article 141/142 of the Constitution, till the enactment of suitable Parliamentary and/or State Legislations on the subject. The Ministry of Home Affairs has requested all State government/Union Territory (UT) Administrations *vide* its letter dated 14.01.2019 to implement the Witness Protection Scheme as per the direction of the Hon'ble Supreme Court⁵.

7. Aims and objectives of the Scheme

The objective of this Scheme is 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. It aims to promote law enforcement by facilitating the criminal law enforcement agencies and overall administration of Justice.

8. Competent Authority under the Scheme

The Competent Authority under the scheme has been defined as a Standing Committee in each district chaired by District and Sessions Judge with Head of the Police in the District as Member and Head of the prosecution in the District as its Member Secretary.

9. State Witness Protection Fund

State Witness Protection Fund has been proposed under the Scheme from which the expenses incurred during the implementation of Witness Protection Order passed by the Competent Authority and other related expenses shall be met. The sources of the State Witness Protection Fund are - Budgetary allocation made in the Annual Budget by the State Government; Receipt of amount of fines ordered to be deposited by the courts/tribunals in the Witness Protection Fund; Donations/contributions from International/National/Philanthropist/Charitable Institutions/Organizations and individuals permitted by Government and Funds contributed under Corporate Social Responsibility.

⁵ <http://164.100.24.220/loksabhaquestions/annex/17/AS136.pdf>

Categories of witness

The scheme identifies three categories of witnesses as per threat perception. These are :

- Category 'A' - Where the threat extends to life of a witness or his family members, during investigation/trial or thereafter.
- Category 'B' - Where the threat extends to safety, reputation, property of witness or his family members, during investigation/trial or thereafter.
- 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 investigation/trial or thereafter.

https://www.mha.gov.in/sites/default/files/Documents_PolNGuide_finalWPS_08072019.pdf

10. Types of Protection Measures (Clause 7)

The witness protection measures ordered shall be proportionate to the threat and shall be for a specific duration on need basis which is to be reviewed regularly. These may include :

- Ensuring that witness and accused do not come face to face during investigation or trial;
- Monitoring of mail and telephone calls;
- Arrangement with the telephone company to change the witness's telephone number or assign him or her an unlisted telephone number;
- Installation of security devices in the witness's home such as security doors, CCTV, alarms, fencing etc.;
- Concealment of identity of the witness by referring to him/her with the changed name or alphabet;
- Emergency contact persons for the witness;
- Close protection, regular patrolling around the witness's house;
- Temporary change of residence to a relative's house or a nearby town;
- Escort to and from the court and provision of Government vehicle or a State funded conveyance for the date of hearing;
- Holding of in-camera trials;
- Allowing a support person to remain present during recording of statement and deposition;
- Usage of specially designed vulnerable witness court rooms which have special arrangements like live links, one way mirrors and screens apart from separate passages for witnesses and accused, with option to modify the image of face of the witness and to modify the audio feed of the witness' voice, so that he/she is not identifiable;
- Ensuring expeditious recording of deposition during trial on day to day basis without adjournments;
- Awarding time to time periodical financial aids/grants to the witness from Witness Protection Fund for the purpose of re-location, sustenance or starting new vocation/profession, as may be considered necessary;

- Any other form of protection measures considered necessary, and specifically, those requested by the witness can be ordered by Competent Authority.

11. Procedural framework

- The application for seeking protection order under this scheme can be filed in the prescribed form before the Competent Authority as per area jurisdiction along with supporting documents.
- As and when an application is received by the Competent Authority, in the prescribed form, it shall forthwith pass an order for calling the Threat Analysis Report from the Commissioner of Police in Commissionerates/ SSP in District Police investigating the case.
- Depending upon the urgency in the matter owing to imminent threat, the Competent Authority can pass orders for interim protection of the witness or his family members during the pendency of the application.
- The Threat Analysis Report shall be prepared expeditiously by the Commissioner of Police in Commissionerates/ SSP in District Police investigating the case while maintaining full confidentiality and it shall reach the Competent Authority within five working days of receipt of the order.
- In the report, the Commissioner of Police in Commissionerates/ SSP in District Police investigating the case shall categorize the threat perception and shall also submit the suggestive measures for providing adequate protection to the witness or his family as contained in clause 7 of the scheme or any other measure found appropriate.
- While processing the application for witness protection, the Competent Authority shall also interact preferably in person and if not possible through electronic means with the witness and/or his family members/employers or any other person deemed fit so as to ascertain the witness protection needs of the witness.
- All the hearings on Witness Protection Application shall be held in camera by the Competent Authority while maintaining full confidentiality.
- An application shall be disposed of within five working days of receipt of Threat Analysis Report from the police authorities.
- The Witness Protection Order passed by the Competent Authority shall be implemented by the Witness Protection Cell of the State/UT Police or Central Police Agency. Overall responsibility of implementation of all witness protection orders passed by the Competent Authority shall lie on the Head of the Police in the State/UT. However the Witness Protection Order passed by the Competent Authority for change of identity or/and relocation shall be implemented by the Department of Home of the concerned State/UT.
- Upon passing of a Witness Protection Order, the Witness Protection Cell shall file a monthly follow-up report before the Competent Authority.
- In case the Competent Authority finds that there is a need to revise the Witness Protection Order or an application is moved in this regard, a fresh Threat Analysis Report may be called from the Commissioner of Police in Commissionerates/SSP in District Police.
- In case the witness or the police authority is aggrieved by the decision of the Competent Authority, a review application may be filed within 15 days of passing of orders by the Competent Authority.

12. Recovery of expenses

In case the witness has lodged a false complaint, the Home Department of the concerned Government can initiate proceedings for recovery of the expenditure incurred from the Witness Protection Fund⁶.

13. Conclusion

The Witness Protection Scheme, 2018 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. The witnesses being eyes and ears of justice, play an important role in bringing perpetrators of crime to justice. This scheme attempts at ensuring that witnesses receive appropriate and adequate protection. This will go a long way in strengthening the Criminal Justice System in the country and will consequently enhance National Security Scenario⁷.

⁶ https://www.mha.gov.in/sites/default/files/Documents_PoINGuide_finalWPS_08072019.pdf

⁷ <https://bprd.nic.in/WriteReadData/CMS/Witness%20Protection%20Scheme-2018.pdf>