

The Witness Protection Scheme: Requirement and Review



Witness Protection Scheme: Requirement and Overview

The recommendation of **Justice Malimath Committee**(2003) dealing with the criminal justice system of India along with the **Law Commission**(198th report) about the need for separate legislation concerning witness protection has been approved by the Supreme Court in the case of *Mahendra Chawla v. Union of India*. The court has already stated that any person who has witnessed any crime or has knowledge regarding its commencement, is required to present himself before the state and shall aid the state in administering justice [(1997) 6 SCC 514]. This creates a duty added to the social contract of the citizens which should be balanced and actuated by providing rights and safeguards necessary for its enforcement.

Additionally, the lack of realization regarding the fundamental aspect of the evidentiary value of the statement given by a witness carries has been done away with this draft scheme as approved by the apex court. Further, the state legislatures have to implement the scheme until pan-India legislation is passed by the parliament.

A bench consisting of Justice A.K Sikri and Justice Abdul Nazeer stated that “it shall be the law under Article 141 and Article 142 of the Constitution until the enactment of suitable parliamentary and/or state legislation on this subject”. This draft is a joint effort of the National Legal Service Authority (NALSA) and Bureau of Police Research and Development (BPRD) along with the inputs from 18 states and UTs. The judgment further said that the witnesses are very vulnerable owing to the duress caused by the accused coupled with the marginal protection provided to them, which results in their hostile behaviour further violating the right of testifying in a court in a free and fair manner.

Definition of Witness

The Witness Protection Scheme 2018 defines ‘witness’ as: “*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 concerning such proceedings*”.

Classification of Witnesses

The draft classifies the witness according to the perceived threat level and has three categories, namely Category ‘A’, ‘B’ and ‘C’. The categories have been designed to provide safeguards and protection according to the magnitude of the threat that witnesses perceive.

- **Category 'A'**: Extension of a threat to the life of witness or his/her family. The extension of threat can be during trial/investigation or can sustain even after the trial is over.
- **Category 'B'**: Extension of a threat to reputation/property/safety (not amounting to life) of the witness or his/her family. The protection from threats in this particular instance can only be provided during trial/investigation and not afterward.
- **Category 'C'**: Extension of threat is limited to harassment/intimidation to the witness or his/her family members.

Nature of Protection

The draft provides for the nature and magnitude of protection/safeguard to be in proportion with the perceived threat. There is also a clause of reasonability enshrined in the draft, meaning thereby, the protection/safeguard will be for a limited (reasonable) period and not perpetual. Rights ascribed to Witnesses branches from giving evidence anonymously to conveyance and stay arrangements. The domain of rights that are now attached to witnesses includes privacy, security at court premises, and the right to acquire the status of the investigation. Some of the steps that the scheme provides are explained hereafter,

- During the pendency of trial or investigation, the investigating agency shall assure that the accused must not confront the witness or vice-versa. This is one of the very primitive steps that require the agency to be vigilant at all times.
- Identity of the witness must be protected at all times and in the necessary circumstance where the agency has failed in protecting the identity of the witness, he/she shall be provided with a new identity.
- An application to the competent authority of the district where the offense has been committed can be filed by the witness to get the required protection.
- There is a provision of a safe house for the witness when he/she is threatened for his/her life, police escorts will transfer him/her to the safe house.
- Further, in case of threatening, the investigating agency has the power to monitor the mails (electronic/print) and phone calls of the witness to ascertain the threat long with the perpetrator.
- Additionally, District Courts shall ensure that, within the premise of court, the witness could address the truth without any fear or threat. To ensure this, Witness Deposition Complex will be set up in all the District Courts, by their respective legislatures.

Funding

The draft scheme provides for a State Witness Protection Fund to fulfil the above-mentioned guidelines. The state government shall have control over this fund and it will be managed by the Department/Ministry of Home Affairs of the respective state/UT.

- The annual budget of every state shall deal with the allocation of an amount to the concerned fund.
- The state government has been asked to allow the contribution/donation under CSR or by any other means.

Conclusion

The draft protection scheme provides a great deal of relief to the witnesses. The current scenario is not adequate for them and the criminal justice system in India further delays the process of imparting justice to the victim. Questions left unanswered- How the identity will be kept secret? How relocation will be done? What will happen if authorities don't follow the scheme as there is no provision of penalty acting as a deterrent to them? Witness sensitization is a long haul in India given the deplorable situation of the victim itself. The threat analysis report again paves a way for the red-tapism that is prevalent in the executive of which bureaucracy is a part. Also, media houses should be brought under the provision to stop them in naming and stating the name and identity of witnesses. This scheme intends to protect people who are directly or indirectly involved in assisting with criminal law, enforcement agency or the overall administration of justice. It will improve the conviction rate in heinous crime which is 12-14% in India currently. It will develop a collective trust of the populous in the government.

Target CLAT 2020

A Master Course (Batch 3)

Crack CLAT, AILET and other law exams with Gradeup

Why take this course?

- › Expert Guidance by NLU alumni for Complete Conceptual Clarity
- › Exhaustive Day-Wise Study Plan covering the entire syllabus
- › All Topics Covered Through Live Classes & Quizzes
- › Daily Quizzes to Boost Your Speed and Accuracy



Navin Iyer, Surajit Bhaduri, Ankit Sharma, Pranav Pant

#PrepSmart #StaySafe