

WITNESS PROTECTION SCHEME

December 13, 2018

Manifest Pedagogy

Criminal Justice Reforms has been in news because of various issues : Under-trials, prison reforms, “burden and standard of proof” issue recommended by Malimath Committee, UAPA – 1967 and trial issues surrounding it, juvenile crimes and death penalty, delay in mercy petitions, etc. A larger question like whether India needs a completely new criminal justice system could be asked.

In news

The Supreme Court approved India’s first witness protection scheme.

Placing it in syllabus

Structure, organization and functioning of the Executive and the Judiciary

Static dimensions

1. Law commission’s recommendations on witness protection
2. Malimath committee on witness protection
3. Madhav Menon committee on witness protection

Current dimensions

1. Witness protection scheme
2. Recent supreme court judgment on witness protection
3. Prison reforms
4. Criminal Justice Reforms and the need for them.

Content

“Witnesses are eyes and ears of the Court”. 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. The need to protect witnesses has been emphasised by the Hon’ble Supreme Court of India in **“Zahira Habibulla H. Sheikh and another Vs. State of Gujarat”** 2004. Approval of the witness protection scheme by Supreme Court is another step forward in it.

Law commission’s recommendations on witness protection

1. 198th Report of the Law Commission on ‘Witness Identity Protection and Witness Protection Programme’- In this Report **it has confined the Witness Identity Protection procedures to cases triable by the Court of Session of Courts of equal rank. It also mentions three categories of witnesses, they are;**
 1. Victim-witnesses who are known to the accused;
 2. Victims-witnesses not known to the accused (e.g. as in a case of indiscriminate firing by the accused) and
 - Witnesses whose identity is not known to the accused. **Category (i) requires protection from trauma and categories (ii) and (iii) require protection against disclosure of identity**
1. 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.
2. The 172 and 178th report 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 witness protection

Malimath Committee report on reforms in criminal justice system in 2003, recommended the following with respect to witness protection :

1. Law should be amended to the effect that the literate witness signs the statement and illiterate one puts his thumb impression thereon. A copy of the statement should be mandatorily given to the witness.
2. **Audio/video recording of statements of witnesses, dying declarations and confessions should be authorized by law.**
3. Presence of witnesses of the locality or other locality or neighborhood is required under different provisions of the existing laws. The committee recommends that such provisions be deleted and substituted by the words "the police should secure the presence of two independent witnesses."
4. **Witness** who comes to assist the court should be **treated with dignity** and shown due courtesy. An official should be assigned to provide assistance to him.
5. **A law should be enacted for giving protection to the witnesses and their family members on the lines of the laws in USA and other countries**
6. The judge should be vigilant and regulate cross-examination to **prevent the witness being subjected to harassment**, annoyance or indignity. This should be ensured through training and proper supervision by the High Courts.

Witness protection scheme

The question of witness protection had come up in a PIL that sought protection for witnesses in cases against self-styled Godman Asaram Bapu. **The scheme was finalised in consultation with National Legal Services Authority (NALSA).**

The important **features of the Witness Protection Scheme, 2018** include :

1. Identifying categories of threat perceptions
2. Preparation of a 'Threat Analysis Report' by the head of the police
3. Protective measures like ensuring that the witness and accused do not come face to face during probe, protection of identity
4. Change of identity
5. Relocation of witness
6. Witnesses to be apprised of the scheme
7. Confidentiality and preservation of records
8. Recovery of expenses etc.

The program identifies “three categories of witnesses as per threat perception”:

1. **Category A** : Those cases where threat extends to life of **witness or family** members during investigation, trial or even thereafter.
2. **Category B** : Those cases where the threat extends to **safety, reputation or property** of the witness or family members during the investigation or trial.
3. **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.

Key Highlights of the scheme

▪ State Witness Protection Fund

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 imposed (under Section 357 of the CrPC) ordered to be deposited by the courts/tribunals in the Witness Protection Fund; Donations/contribution from

International/National/Philanthropist/ Charitable Institutions/Organizations and Witness Protection Scheme, 2018 : The New Paradigm (P/3) individuals permitted by Central/State Governments and Funds contributed under Corporate Social Responsibility.

▪ **Witness Protection Order**

Overall responsibility of implementation of all Witness Protection Scheme, 2018 : The New Paradigm 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.

▪ **Witness Protection Cell**

The Witness Protection Order passed by the Competent Authority shall be implemented by the Witness Protection Cell of the State/UT/CP0.

▪ **Competent Authority**

The entire proceedings regarding filing of application etc. take place before the Competent Authority who is empowered under the Scheme to pass orders for protection of the witness. The Competent Authority under the scheme has been defined to mean Secretary, District Legal Services Authority (DLSA) and he/she alone can pass witness protection order for the witness protection under this Scheme and who may issue orders for protection of identity/change of identity/relocation of a witness, categorisation of threat, duration and types of protection as detailed in clause 7.

Recent judgment of Supreme Court on witness protection

- The Supreme Court approved witness protection scheme

noting that one of the main reasons for witnesses to turn hostile is that they are not provided appropriate protection by the State.

- **A Bench of Justices A K Sikri and S Abdul Nazeer** asked the Centre, states and Union Territories to “enforce” the scheme “in letter and spirit”
- The court said, **“it shall be the ‘law’ under Article 141/142 of the Constitution, until the enactment of suitable Parliamentary and/or State Legislations on the subject”**.

Apart from the above committees/commissions, **Madhav Menon committee also made recommendations for the protection of witnesses**. However, to reform criminal justice system we need a holistic approach and the said recommendations throw light on it.

Test yourself : Mould your thoughts

Criminal Justice System in India is in dire need of reforms. In the light of this statement, critically examine the recent Witness Protection Scheme.