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Witness Protection Scheme, 2018

Why in news?

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The Supreme Court has approved India's first Witness Protection Scheme.

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What is the Witness Protection Scheme, 2018?

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- The scheme was drawn up by

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- i. the central government with inputs from 8 states/Union Territories
- ii. legal services authorities of five states
- iii. open sources including civil society, three high courts as well as from police personnel

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- The scheme was finalised in consultation with the National Legal Services Authority (NALSA).

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- **Features** - The important features include identifying categories of threat perceptions and preparation of a 'Threat Analysis Report' by the head of the police.

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- Besides, other protective measures include -

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- i. ensuring that the witness and accused do not come face to face during probe
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- ii. protection of identity
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- iii. change of identity
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- iv. relocation of witness
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- v. witnesses to be apprised of the scheme
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- vi. confidentiality and preservation of records
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- vii. recovery of expenses, etc
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- Other features include in-camera trial, proximate physical protection and anonymising of testimony and references to witnesses in the records.
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- **Threat perception** - The programme identifies “three categories of witnesses as per threat perception” as follows:
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- Category A - cases where threat extends to life of witness or family members during investigation, trial or even thereafter
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- Category B - cases where threat extends to safety, reputation or property of the witness or family members during the investigation or trial
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- Category C - cases where threat is moderate and extends to harassment or intimidation of the witness or family members, reputation or property during the investigation, trial or thereafter
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- **Procedure** - The application for protection will have to be filed before the “Competent Authority” along with supporting documents.
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- The Authority will in turn seek a “Threat Analysis Report” from the ACP/DCP in charge of the police station.
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- The Authority will be required to dispose an application within five days from the date of receipt of Threat Analysis Report.
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- In its report, the police officer must categorise the threat perception and suggest protective measures.
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- The Authority shall interact with the witness and other relevant persons (in person or through electronic means).
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- Proceedings of the Authority will be held in-camera.
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- The Witness Protection Order passed by the Competent Authority shall be implemented by the Witness Protection Cell of the state or UT.
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- The “overall responsibility” for implementing the order lies with the head of the police of the state and Union Territory.
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- If the order is for change of identity or relocation, it shall be implemented by the Home department concerned.
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- The Witness Protection Cell will file a monthly follow-up report to the Authority.
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- It also empowers the Authority to call for a fresh Threat Analysis Report if it feels the need to revise its order.
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- **Fund** - The expenses for the programme will be met from a Witness Protection Fund to be established by the states and UTs.
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- They should make annual budgetary allocation for the fund which will also be free to accept donations.
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- Donations could be from national and international philanthropic organisations and amounts contributed as part of Corporate Social Responsibility.
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What is the Court's order?

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- The court noted that one of the main reasons for witnesses turning hostile is the lack of appropriate protection by the State.

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- Being unable to testify in courts due to threats or other pressures is a clear violation of Article 21 of the Constitution.

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- The Court thus asked the Centre, states and Union Territories to “enforce” the scheme “in letter and spirit”.

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- It asked all states and UTs to set up vulnerable witness deposition complexes, as required by the Scheme, by the end of 2019.

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- These rooms will be equipped with facilities to prevent the accused and witness coming face to face.

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- 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”.

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How does it hep?

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- Witnesses turning hostile is a major reason for most acquittals.

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- In the current system, there is little incentive for witnesses to turn up in court and testify against criminals.

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- Besides threats to their lives, they experience hostility and harassment while attending courts.

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- The judicial process seldom takes into account the distance they have travelled or the time they have lost in attending court.

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- Thus, the need to protect witnesses has been emphasised by Law Commission reports and court judgments for years.

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- A robust witness protection scheme will bring in efficiency in the criminal justice system, given the abysmal rate of convictions in the country.

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Source: Indian Express, The Hindu

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