

No. 144/XXXVI(3)/2020/13(1)/2020

Dated Dehradun, May 06, 2020

NOTIFICATION

Miscellaneous

In pursuance of the provisions of Clause (3) of Article 348 of the Constitution of India, the Governor is pleased to order the publication of the following English translation of 'The Uttarakhand Witness Protection Act, 2020' (Act No. 15 of 2020).

As passed by the Uttarakhand Legislative Assembly and assented to by the Governor on 27 April, 2020.

The Uttarakhand Witness Protection Act, 2020

(Uttarakhand Act No. 15 of 2020)

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ACT

To provide protection to the Witnesses in the State of Uttarakhand.

Be it enacted by the Uttarakhand State Legislative Assembly in the Seventy-first year of the Republic of India as follows:-

Part I

Preliminary

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| Short title,
Extent and
commencement | 1. (1) This Act may be called the "Uttarakhand Witness Protection Act, 2020."
(2) It shall extend to the whole of the State of Uttarakhand.
(3) It shall come into force at once. |
| Definitions | 2. (1) In this Act, unless the subject or context otherwise requires--
(a) "Competent Authority" means committee constituted in the Chairmanship of District Judge and Senior |

Superintendent of Police/Superintendent of Police, Additional District Magistrate and Prosecution officer in charge of District (Joint Director, Prosecution/ Senior prosecution officer) shall be its members.

Additional District Magistrate shall be nominated by the District Magistrate as the member of committee.

- (b) **"Code"** means the Code of Criminal Procedure, 1973;
- (c) **"Family Member"** means Grandparents, parents/ guardian, siblings, spouse, children and grand children of the witness;
- (d) **"Form"** means the form annexed with this Act;
- (e) **"Government"** means the government of State of Uttarakhand;
- (f) **"In camera proceeding"** means proceedings wherein the Competent Authority/Court allows only those persons who are necessary to be present while hearing and deciding the witness protection application or disposing in the court;
- (g) **"Live Link"** means a live television link or other such arrangement in electronic form whereby the witness may give evidence in questioned suit while absent from the Court room;
- (h) **"Offence"** means those offences which are punishable with death or life imprisonment or an imprisonment of seven years or more and also offences punishable under Section 354, 354A, 354B, 354C, 354D and 509 of Indian Penal Code.
- (i) **"Protection measures"** means the measures taken by Competent Authority/court so that the witnesses may give evidence in suit without fear of their life and reputation or of their family members;
- (j) **"State Witness protection Fund"** means the fund created under section 3 for bearing the expenses incurred during the implementation of witness protection order passed by the Competent Authority under this Act;

- (k) **“Threat Analysis Report”** means such detailed report which is prepared by the Sub Divisional Magistrate, Additional Superintendent of Police/Circle officer and Zonal officer/Special Branch investigating the seriousness and credibility of the threat, given to the witness or his family members which shall contain specific details about threat to the witness or members of his family or risk of their life, property or resources. It shall also specify the threat perception apart from suggesting the specific witness protection steps which deserve to be taken in the matter;
- (l) **“Witness”** means such person who has made a statement or who has given or agreed to give evidence in relation to any offence as may be prescribed or who possessed information or document about any offence regarded by the Competent Authority as being material to any criminal proceeding or is required to be given protection or other assistance under this Act;
- (m) **“Witness protection application”** means an application moved by the witness before Competent Authority in prescribed form for seeking witness protection order. It may be moved by the witness or by members of his family or his duly engaged counsel or SHO/SO in-charge or Superintendent of Police, prison concerned and same shall preferably be forwarded through the Prosecution Officer concerned;
- (n) **“Witness protection order”** means an order issued from the level of Competent Authority on the basis of threats analysis report of the witness or his family members;
- (o) **“Witness protection cell”** means cell constituted at district level regarding witness protection whose duty is to implement the witness protection order absolutely. At district level, this cell shall be headed by Senior Superintendent of Police/ Superintendent of Police.

Part II

Procedure to be followed regarding witness protection

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| <p>State witness protection Fund</p> | <p>3. (a) There shall be a fund at State level for the expenses incurred during the implementation of witness protection order passed by the Competent Authority or any other related expenditure for witness protection.</p> <p>(b) The witness protection fund shall comprise the following—</p> <ul style="list-style-type: none"> (i) budgetary allocation made in the Annual Budget by the State Government; (ii) receipt of amount of fines imposed under section 357 of the Code of Criminal Procedure, 1973 ordered to be deposited by the Court/ Tribunals in the witness protection fund; (iii) donations/contributions from International/National/ Charitable institutions/Organizations and individuals, permitted by the State Government; (iv) funds contributed under corporate social responsibility. <p>(c) The said fund shall be operated by the Home Department under State Government. District Magistrate or officer nominated by him shall have the right of distribution and disbursing the amount distributed to the districts from State level.</p> |
| <p>Submitting the application before Competent authority</p> | <p>4. The witness protection application regarding protection of the witness shall be submitted before the Competent Authority along with the desired document, in two copies, either directly or through the Trial Court or through Superintendent of Prison.</p> |
| <p>Procedure for processing the application regarding providing witness protection</p> | <p>5. (1) 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 Senior Superintendent of Police/Superintendent of Police of the concerned district, investigating the case.</p> |

- (2) Depending upon the urgency in the matter owing to imminent threat, the Senior Superintendent of Police/ Superintendent of Police of district may pass the interim order for the protection of witness and his family member during the pendency of the application, but the final order shall be passed only by the Competent Authority.
- (3) The threat analysis report shall be prepared by the Senior Superintendent of Police or Superintendent of Police of district concerned investigating the case and shall make available the threat analysis report to the Competent Authority while maintaining full confidentiality within five working days of receipt of the order issued by the Competent Authority.
- (4) The Competent Authority may issue the witness protection order by determining the category of witness on the basis of threat analysis report.
- (5) All the hearings on witness protection application shall be held in-camera by the Competent Authority while maintaining full confidentiality.
- (6) Senior Superintendent of Police/ Superintendent of Police of concerned districts shall be authorized to provide witness protection by self evaluation of the life danger to witness even without the application. Ex-Post facto sanction of such order regarding witness protection from the Competent Authority must be taken.
- (7) The witness protection order passed by the Competent Authority shall be implemented by the Witness Protection Cell of the district. Overall responsibility of implementation of witness protection order shall lie on SSP/SP of the concerned district.

Provided that if the witness protection order is passed by the Competent Authority for change of identity or relocation, the required measures shall be taken by SSP/SP of district concerned regarding its enforcement.

(8) Upon passing of a witness protection order, the Witness Protection Cell shall produce a monthly follow up report before the Competent Authority in prescribed format.

(9) The Competent Authority shall review the witness protection order quarterly. If any application is moved in this regard by the witness or police, in such case a fresh threat analysis report may be called for from the SSP/SP. Thereafter, further order shall be passed by the Competent Authority on the basis of Threat Analysis Report.

**Types of
protection
measures**

6. The witness protection measure ordered shall be proportionate to the threat and shall be for a specific duration not exceeding three months at a time. It may include following measures:-

- (a) Ensuring that witness and accused do not come face to face during investigation or trial;
- (b) Monitoring of mails and telephone calls;
- (c) Arrangement with the telephone company to change the witness's telephone number or provide him or her an unlisted telephone number.
- (d) Installation of security devices in the witness's home such as security doors, CCTV, alarms, fencing, etc;
- (e) Concealment of identity of the witness by referring to him/her with the changed name or alphabet;
- (f) Emergency contact person for the witness;
- (g) Close protection and regular patrolling around the witness's house;
- (h) Temporary change of residence to a relative's house or a nearby town;
- (i) Escort to and from the court and provision of Government vehicle or a State funded conveyance for the date of hearing;
- (j) Holding of in-camera trials;

- (k) Allowing a support person to remain present during recording of statement and deposition;
- (l) Usage of specially designed vulnerable witness court rooms which have special arrangements like live video links, one way mirrors and screens apart from separate passages for witness 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;
- (m) ensuring expeditious recording of the statement of witness during trial on day to day basis without adjournments;
- (n) Awarding time to time periodical financial aids/grants to the witness from State Witness Protection Fund for the purpose of re-location, sustenance or starting a new vocation/profession, if necessary;
- (o) Any other form of protection measures, which may consider necessary.

Monitoring and review

7. Once the protection order is passed, the Competent Authority shall monitor its implementation and shall review the same on the basis of follow-up report. However the Competent Authority shall review the witness protection order on quarterly basis based on the monthly follow-up reports submitted by the Witness Protection Cell.

Part III

Protection of identity of witness

Protection of identity

8. (1) During the course of investigation or trial of any serious offence, an application for seeking identity protection may be filed before the Competent Authority. Upon receipt of the application, the Competent Authority shall examine the threat analysis report and also enquire about the witness or his family member or any other person whom it deems fit to ascertain whether there is any necessity or not to pass an identity protection order.

- (2) During the course of hearing of the application, the identity of the witness shall not be revealed to any other person. Media shall also not have right for its publication. Thereafter the competent authority may dispose off the application as per material available on the record.
- (3) On passing the order for concealment of identity of witness by the Competent Authority, said order shall be implemented by the Witness Protection Cell by coordinating with all concerned agencies.

Part IV

Miscellaneous

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| Witness to be apprised of the provision of the Act | 9. | It shall be mandatory for Investigating Officer/Court to inform each and every witness about the existence of this Act and its salient features. |
| Confidentiality and preservation of records | 10. | <p>(1) The Competent Authority/Department/Officer of Witness Protection Cell/ SSP/S.H.O./lawyers from both sides and other concerned employees shall maintain full confidentiality in this regard and shall ensure that under no circumstance, any record, document or information qua the proceedings under this scheme shall be shared in any manner except the written order of Trial Court/ Appellate Court.</p> <p>(2) All the records pertaining to proceedings under this scheme shall be preserved till such time the related trial or Appeal thereof is pending before a court of law. After three years of disposal of the last court proceedings, the hard copy of the record may be weeded out by the Competent Authority after preserving the scanned soft copies of the same.</p> |
| Recovery of expenses | 11. | If the witness has lodged a false complaint, the Competent Authority may issue the order for recovery of expenses incurred from the state witness protection fund and may initiate any other legal proceedings. |
| Review | 12. | In case the witness or the police officer is aggrieved by the decisions of the Competent Authority, a review application may be filed within fifteen days of passing of the orders by the Competent Authority. |

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| Decision not to be actionable | 13. | The decisions of Competent Authority shall not be actionable in Civil Courts. |
| Applicability of certain provisions of Right to Information Act | 14. | The provision of clause (g) and clause (h) of sub section (1) of Section 8 of the Right to Information Act, 2005 shall be applicable on all proceedings related to the identity of witness, witness protection order and review order. |
| Power to make rules | 15. | (1) The State Government may, by notification, make rules to carry out the provisions of this Act.
(2) Every rule made under this section shall, as soon as may be after it is made, be laid before the state legislature. |
| Power to remove difficulties | 16. | If any difficulty arises in giving effect to the provision of this Act, the State Government may, by a notification or order, make such provision, not inconsistent with the provisions of this Act, as appear to it to be necessary or expedient, for removing the difficulty: |

Provided that no order shall be made after the expiration of a period of two years from the commencement of this Act.

By Order,

PREM SINGH KHIMAL,
Secretary.

उद्देश्य और कारणों का कथन

मा0 उच्चतम न्यायालय द्वारा क्रिमिनल रिट याचिका संख्या-156/2016 महेन्द्र चावला एवं अन्य बनाम भारत संघ एवं अन्य में दिनांक 05.12.2018 को निर्णय पारित करते हुए "साक्षी संरक्षण योजना, 2018" अनुमोदित की गयी है। मा0 न्यायालय ने उक्त योजना को "भारत का संविधान" के अनुच्छेद 141/142 के अन्तर्गत विधि घोषित किया है, जब तक कि संसद या राज्य विधायिका के द्वारा यथोचित विधान इस संदर्भ में नहीं बना दिया जाता। मा0 उच्चतम न्यायालय के उक्त निर्देशों के अनुपालन में उत्तराखण्ड राज्य में साक्षियों को संरक्षण प्रदान किये जाने हेतु विधि बनायी जानी अपरिहार्य है।

अतः तदनुसार "उत्तराखण्ड साक्षी संरक्षण विधेयक, 2020" पुरःस्थापित किया जा रहा है।

2- प्रस्तावित विधेयक उपर्युक्त उद्देश्य की पूर्ति करता है।

त्रिवेन्द्र सिंह रावत
मुख्यमंत्री