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HOME DEPARTMENT

NOTIFICATION

The 5th July, 2019

No. 26424-HOME-CPM-RCMDN-0001/2018/H.

**1. Short title and Commencement:—**

- (A) The Scheme shall be called the **Witness Protection Scheme, 2019**
- (B) It shall come into force on the date of its publication in the *Odisha Gazette*.

**PART-I**

**2. Definitions.-Unless the context otherwise requires,—**

- (a) "**Code**" means the Code of Criminal Procedure, 1973 (2 of 1974);
- (b) "**Competent Authority**" means 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;
- (c) "**Concealment of identity of Witness**" means and includes any condition prohibiting publication or revealing, in any manner, directly or indirectly, of the name, address and other particulars which may lead to the identification of the witness during investigation, trial and post-trial stage;
- (d) "**Family Member**" includes parents or guardian, spouse, live-in partner, siblings, children, grandchildren of the witness;
- (e) "**Form**" means "**Witness Protection Application Form**" appended to this Scheme;
- (f) "**In Camera Proceedings**" means proceedings wherein the Competent Authority or Court allows only those persons who are necessary to be present while hearing and deciding the witness protection application or deposing in the court;

- (g) **"Live Link"** means and includes a live video link or other such arrangement whereby a witness, while not being physically present in the court room for deposing in the matter or interacting with the Competent Authority;
- (h) **"Offence"** means those offences which are punishable with death or life imprisonment or an imprisonment up to seven years and above and also offences punishable under Sections 354, 354A, 354B, 354C, 354D and 509 of the Indian Penal Code;
- (i) **"Threat Analysis Report"** means a detailed report prepared and submitted by the Head of the Police in the District Investigating the case with regard to the seriousness and credibility of the threat perception to the witness or his family members. It shall contain specific details about the nature of threats by the witness or his family to their life, reputation or property apart from analyzing the extent, the or persons making the threat, have the intent, motive and resources to implement the threats. It shall also categorize the threat perception apart from suggesting the specific witness protection measures which deserves to be taken in the matter;
- (j) **"Witness"** means any person, who posses information or document about any offence;
- (k) **"Witness Protection Application"** means an application moved by the witness in the prescribed form before a Competent Authority for seeking Witness Protection Order. It can be moved by the witness, his family member, his duly engaged counsel or IO/SHO/SDPO/Prison SP concerned and the same shall preferably be got forwarded through the Prosecutor concerned;
- (l) **"Witness Protection Cell"** means a dedicated Cell of the State Police or Central Police Agencies assigned with the duty to implement the witness protection order;
- (m) **"Witness Protection Fund"** means the fund created for bearing the expenses incurred during the implementation of Witness Protection Order passed by the Competent Authority under this scheme;
- (n) **"Witness Protection Measures"** means measures spelt out in Clause 7, Part-III, Part-IV and Part V of the Scheme; and
- (o) **"Witness Protection Order"** means an order passed by the Competent Authority detailing the witness protection measures to be taken.

**PART-II****3. Categories of witness as per threat perception:—**

Category 'A' : Where the threat extends to life of witness or his family members, during investigation or trial or thereafter.

Category 'B' : Where the threat extends to safety, reputation or property of the witness or his family members, during the investigation or 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 the investigation or trial or thereafter.

**4. State Witness Protection Fund:—**(1) There shall be a Fund, namely, the Witness Protection Fund from which the expenses incurred during the implementation of Witness Protection Order passed by the Competent Authority and other related expenditure, shall be met.

(2) The Witness Protection Fund shall comprise the following, namely:—

- (a) Budgetary allocation made in the Annual Budget by the State Government;
- (b) Receipt of amount of costs imposed or ordered to be deposited by the Courts or tribunals in the Witness Protection Fund;
- (c) Donations or contributions from Charitable Institutions or Organizations and individuals permitted by the Central or State Governments;
- (d) Funds contributed under Corporate Social Responsibility.

(3) The said Fund shall be operated by the Department or Ministry of Home under the State Government.

**5. Filing of application before the Competent Authority:—**

The application for seeking protection order under this scheme can be filed in the prescribed form (*ANNEXURE-I*) before the Competent Authority of the concerned District where the offence is committed, through its Member Secretary along with supporting documents, if any.

**6. Procedure for processing the application :—**(1) As and when an application is received by the Member Secretary of the Competent Authority, in the prescribed form, it shall forthwith pass an order for calling for the Threat Analysis Report from the Assistant Commissioner of Police / Deputy Superintendent of Police in charge of the concerned Police Subdivision.

(2) 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.

(3) The Threat Analysis Report shall be prepared expeditiously while maintaining full confidentiality and it shall reach the Competent Authority within five working days of receipt of the order.

(4) The Threat Analysis Report shall categorize the threat perception and also include suggestive protection measures for providing adequate protection to the witness or his family.

(5) 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 or employers or any other person deemed fit so as to ascertain the witness protection needs of the witness.

(6) All the hearings on Witness Protection Application shall be held in-camera by the Competent Authority while maintaining full confidentiality.

(7) An application shall be disposed of within five working days of receipt of Threat Analysis Report from the Police Authorities.

(8) The Witness Protection Order passed by the Competent Authority shall be implemented by the Witness Protection Cell of the State or the Trial Court, as the case may be. 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. However, the Witness Protection Order passed by the Competent Authority for change of identity and/or relocation shall be implemented by the Department of Home of the State.

(9) Upon passing of a Witness Protection Order, the Witness Protection Cell shall file a monthly follow-up report before the Competent Authority.

(10) 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, and upon completion of trial, a fresh Threat Analysis Report shall be called from the Assistant Commissioner of Police/Deputy Superintendent of Police in-charge of the concerned Police Subdivision.

**7. Types of protection measures:—** (1) The witness protection measures ordered shall be proportionate to the threat and shall be for a specific duration not exceeding three months at a time.

(2) Such measures may include:—

- (a) Ensuring that witness and accused do not come face to face during investigation or trial;
- (b) Monitoring of mail and telephone calls;
- (c) Arrangement with the telephone company to change the witness's telephone number or assign 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 or her with the changed name or alphabet;
- (f) Emergency contact persons for the witness;
- (g) Close protection, 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 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 or she is not identifiable;
- (m) Ensuing expeditious recording of deposition during trial on day-to-day basis without adjournments;
- (n) Awarding time to time periodical financial aids or grants to the witness from Witness Protection Fund for the purpose of re-location, sustenance or starting a new vocation or profession, if desired;
- (o) Any other form of protection measures considered necessary.

**8. Monitoring and Review.:**— Once the protection order is passed, the Competent Authority would monitor its implementation and can review the same in terms of follow up reports received in the matter. However, the Competent Authority shall review the Witness Protection Order on a quarterly basis based on the monthly follow up report submitted by the Witness Protection Cell.

### PART- III

**9. Protection of Identity:**— (1) During the course of investigation or trial of any offence, an application for seeking identity protection can be filed in the prescribed form before the Competent Authority through its Member Secretary.

(2) Upon receipt of the application, the Member Secretary of the Competent Authority shall call for the Threat Analysis Report. The Competent Authority shall examine the witness or his family members or any other person it deem fit to ascertain whether there is necessity to pass an identity protection order.

(3) During the course of hearing of the application, the identity of the witness shall not be revealed to any other person, which is likely to lead to the witness identification. The Competent Authority can thereafter, dispose of the application as per material available on record.

(4) Once, an order for protection of identity of witness is passed by the Competent Authority, it shall be the responsibility of Witness Protection Cell to ensure that identity of such witness or his or her family members including name or parentage or occupation or address or digital footprints are fully protected.

(5) As long as identity of any witness is protected under an order of the Competent Authority, the Witness Protection Cell shall provide details of persons who can be contacted by the witness in case of emergency.

#### **PART-IV**

**10. Change of Identity:—** (1) In appropriate cases, where there is a request from the witness for change of identity and based on the Threat Analysis Report, a decision can be taken for conferring a new identity to the witness by the Competent Authority.

(2) Conferring new identities includes new name or profession or parentage and providing supporting documents acceptable by the Government Agencies. The new identities should not deprive the witness from existing educational or professional or property rights.

#### **PART-V**

**11. Relocation of witness:—**(1) In appropriate cases, where there is a request from the witness for relocation and based on the Threat Analysis Report, a decision can be taken for relocation of the witness by the Competent Authority.

(2) The Competent Authority may pass an order for witness relocation to a safer place within the State or Territory of the Indian Union keeping in view the safety, welfare and wellbeing of the witness. The expenses shall be borne by the Witness Protection Fund.

**PART-VI**

**12. Witnesses to be apprised to the Scheme:—** The State shall give wide publicity to this Scheme. The IO and the Court shall inform witnesses about the existence of "Witness Protection Scheme" and its salient features.

**13. Confidentiality and Preservation of records:—** (1) All stakeholders including the Police, the Prosecution Department, Court Staff, Lawyers from both sides shall maintain full confidentiality and shall ensure that under no circumstance, any record, document or information in relation to the proceedings under this scheme shall be shared with any person in any manner except with the Trial Court or Appellate Court and that too, on a written order.

(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 one year of disposal of the last Court proceedings, the hard copy of the records can be weeded out by the Competent Authority after preserving the scanned soft copies of the same.

**14. 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 Fund.

**15. Review:—** In case the witness or the police authorities are aggrieved by the decisions of the Competent Authority, a review application may be filed within 15 days of passing of the orders by the Competent Authority.

By Order of the Governor  
ASIT TRIPATHY  
Additional Chief Secretary to Government

**Witness Protection Scheme, 2019****(See Clause-5)**

Witness Protection Application

under

Witness Protection Scheme, 2019

Before

(To be filed in duplicate)

The Competent Authority,

District.....

Application for:

1. Witness Protection
2. Witness Identity Protection
3. New Identity
4. Witness Relocation

1.	<b>Particulars of the Witness (Fill in Capital):</b> (1) Name (2) Age (3) Gender (Male/Female/Other) (4) Father's/Mother's Name (5) Residential Address (6) Name and other details of family members of the witness who are receiving or perceiving threats (7) Contact details (Mobile/e-mail)	
2.	<b>Particulars of Criminal matter:</b> (1) FIR No. (2) Under Section (3) Police Station (4) District (5) D D No. (in case FIR not yet registered) (6) Cr Case No. (in case of private complaint)	



3.	Particulars of the Accused (if available / known): (1) Name (2) Address (3) Phone No. (4) Email id	
4.	Name & other particulars of the person giving/suspected of giving threats	
5.	Nature of threat perception. Please give brief details of threat received in the matter with specific date, place, mode and words used	
6.	Type of witness protection measures prayed by/for the witness	
7.	Details of Interim / urgent Witness Protection needs, if required	

- Applicant/witness can use extra sheets for giving additional information.

Date .....

Place.....

\_\_\_\_\_  
(Full Name with signature)

#### UNDERTAKING

1. I undertake that I shall fully cooperate with the Competent Authority and the Department of Home of the State and Witness Protection Cell.
2. I certify that the information provided by me in this application is true and correct to the best of my knowledge and belief.
3. I understand that in case, information given by me in this application is found to be false, Competent Authority under the scheme reserves the right to recover the expenses incurred on me from out of the Witness Protection Fund.

Date .....

Place.....

\_\_\_\_\_  
(Full Name with signature)