Witness Protection Scheme, 2018

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PREFACE

Aims & Objective:

The ability of a witness to give testimony in a judicial setting or to cooperate with law enforcement agencies and investigating officers without fear of intimidation or reprisal is essential in maintaining the rule of law. The objective of this Scheme is to ensure that the investigation, prosecution and trial of criminal offences is not prejudiced because witnesses are intimidated or frightened to give evidence without protection from violent or other criminal recrimination. It aims to promote law enforcement by facilitating the protection of persons who are involved directly or indirectly in providing assistance to criminal law enforcement agencies and overall administration of Justice. Witnesses need to be given the confidence to come forward to assist law enforcement and Judicial Authorities with full assurance of safety. It is aimed to identify series of measures that may be adopted to safeguard witnesses and their family members from intimidation and threats against their lives, reputation and property.

Need and justification for the scheme:

Jeremy Bentham has said that "*Witnesses are the eyes and ears of justice.*" In cases involving heinous crimes, witnesses turn hostile because of threat to life and property. Witnesses feel that there is no statutory legal-obligation on the part of the State to extend any protection to them.

Hon'ble Supreme Court of India also held in **State of Gujarat v. Anirudh Singh (1997) 6 SCC 514** that: "It is the salutary duty of every witness who has the knowledge of the commission of the crime, to assist the State in giving evidence." **Malimath Committee on Reforms of Criminal Justice System, 2003** said in its report that "By giving evidence relating to the commission of an offence, he performs a sacred duty of assisting the court to discover the truth". **Zahira Habibulla H. Shiekh and Another v. State of Gujarat 2004 (4) SCC 158** while defining Fair Trial ***Hon'ble Supreme Court of India observed*** "If the witnesses get threatened or are forced to give false evidence that also would not result in a fair trial".

First ever reference to Witness Protection in India came in 14th ***Report of the*** **Law Commission *of India*** in 1958. Further reference on the subject are found in **154th** and **178th** report of the Law Commission of India. 198th Report of the Law Commission of India titled as **" Witness Identity Protection and Witness Protection Programmes, 2006"** is dedicated to the subject.

Hon'ble Supreme Court observed in ***Zahira case supra***, "no country can afford to expose its morally correct citizens to the peril of being harassed by anti-social elements like rapists and murderers". The 4th **National Police Commission Report, 1980** noted "prosecution witnesses are turning hostile because of pressure of accused and there is need of regulation to check manipulation of witnesses".

Legislature has introduced Section 195A IPC in 2006 making Criminal Intimidation of Witnesses a criminal offence punishable with seven years of imprisonment. Likewise, in statues namely Juvenile Justice (Care and Protection of children) Act, 2015, Whistle Blowers Protection Act, 2011, Protection of Children from Sexual Offences Act (POCSO Act) 2012 and National Investigation Agency Act, 2008 and Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989 also provides for safeguarding witnesses against the threats. However no formal structured programme has been introduced as on date for addressing the issue of witness protection in a holistic manner.

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In recent year's extremism, terrorism and organized crimes have grown and are becoming stronger and more diverse. In the investigation and prosecution of such crimes, it is essential that witnesses, have trust in the criminal justice system. Witnesses need to have the confidence to come forward to assist law enforcement and prosecuting agencies. They need to be assured that they will receive support and protection from intimidation and the harm that criminal groups might seek to inflict upon them in order to discourage them from co-operating with the law enforcement agencies and deposing before the court of law. Hence, it is high time that a scheme is put in place for addressing the issues of witness protection uniformly in the country.

Scope of the Scheme:

Witness Protection may be as simple as providing a police escort to the witness up to the Courtroom or using modern communication technology (such as audio video means) for recording of testimony. In other more complex cases, involving organized criminal group, extraordinary measures are required to ensure the witness's safety viz. anonymity, offering temporary residence in a safe house, giving a new identity, and relocation of the witness at an undisclosed place. However, Witness protection needs of a witness may have to be viewed on case to case basis depending upon their vulnerability and threat perception.

1. SHORT TITLE AND COMMENCEMENT:

(a) The Scheme shall be called "**Witness Protection Scheme, 2018**"
(b) It shall come into force from the date of Notification.

Part I

2. DEFINITIONS:

(a) "**Code**" means the Code of Criminal Procedure, 1973 (2 of 1974);

(b) "**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;

(c) "**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.

(d) "**Family Member**" includes parents/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/Court allows only those persons who are necessarily to be present while hearing and deciding the witness protection application or deposing in the court ;

(g) **"Live Link"** means and include a live video link or other such arrangement whereby a witness, while not being physically present in the courtroom for deposing in the matter or interacting with the Competent Authority;

(h) **"Witness Protection Measures"** means measures spelt out in Clause 7, Part-III, Part-IV and Part V of the Scheme.

(i) **"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 Section 354, 354A, 354B, 354C, 354D and 509 of IPC;

(j) **"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 faced by the witness or his family to their life, reputation or property apart from analyzing the extent, the person 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;

(k) **"Witness"** means any person, who possesses information or document about any offence;

(l) **"Witness Protection Application"** means an application moved by the witness in the prescribed form before a Competent Authority through its Member Secretary for seeking Witness Protection Order. It can be moved by the witness, his family member, his duly engaged counsel or IO/SHO/SDPO/ Jail Superintendent concerned;

(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 Order"** means an order passed by the Competent Authority detailing the witness protection measures to be taken.

(o) **"Witness Protection Cell"** means a dedicated Cell of State/UT Police or Central Police Agencies assigned with the duty to implement the witness protection order.

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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/trial or thereafter.

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

4. STATE WITNESS PROTECTION FUND:

(a) 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.

(b) The Witness Protection Fund shall comprise the following:-

i. Budgetary allocation made in the Annual Budget by the State Government;

ii. Receipt of amount of costs imposed/ ordered to be deposited by the courts/tribunals in the Witness Protection Fund;

iii. Donations/contributions from Philanthropist/ Charitable Institutions/Organizations and individuals permitted by the Government.

iv. Funds contributed under Corporate Social Responsibility.

(c) The said Fund shall be operated by the Department/Ministry of Home under State/UT Government.

5. FILING OF APPLICATION BEFORE COMPETENT AUTHORITY:

The application for seeking protection order under this scheme can be filed in the prescribed form 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:

(a) As and when an application is received by the Member Secretary of the Competent Authority, in the prescribed form, he shall forthwith pass an order for calling for the

Threat Analysis Report from the ACP/DSP in charge of the concerned Police Sub-Division.

(b) 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.

Provided that nothing shall preclude police from providing immediate protection in case of grave and imminent threat to the life of applicant and his family members.

(c) 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.

(d) 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.

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

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

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

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

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 concerned State/UT.

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

(j) 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 ACP/DSP in charge of the concerned Police Sub-Division.

7. TYPES OF PROTECTION MEASURES:

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. These 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/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/she is not identifiable;

(m) Ensuring expeditious recording of deposition during trial on a day to day basis without adjournments;

(n) Awarding time to time periodical financial aids/grants to the witness from Witness Protection Fund for the purpose of re-location, sustenance or starting a new vocation/profession, as may be considered necessary.

(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:

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.

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.

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.

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

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:-

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.

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

Part V

11. RELOCATION OF WITNESS:

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.

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

Part VI

12. WITNESSES TO BE APPRISED OF THE SCHEME:

Every 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:

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/Appellate Court and that too, on a written order.

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.

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Witness Protection Application

under

Witness Protection Scheme, 2018

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.	**Particulars of the Witness** (Fill in Capital): 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.	**Particulars of Criminal matter:** 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.** 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.

(Full Name with signature)

Date: .....

Place: .....

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 my best 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 expensed incurred on me from out of the Witness Protection Fund.

(Full Name with signature)

Date: .....

Place: .....

সাক্ষী সুৰক্ষা আঁচনি, ২০১৮ৰ অধীনত সাক্ষী সুৰক্ষাৰ আবেদন

(দুখন প্ৰতি দাখিল কৰিব)

কৰ্তৃত্বপ্ৰাপ্ত প্ৰাধিকাৰী,
লখিমপুৰ জিলা

পৰিচয় গোপন ৰখা / সাক্ষীক নতুন পৰিচয় প্ৰদান/সাক্ষীৰ পূৰ্ণবাসৰ বাবে আবেদন

১) সাক্ষীৰ বিৱৰন

নাম :

বয়স :

লিংগ (পুৰুষ/মহিলা/অন্য :

পিতৃ/মাতৃৰ নাম :

আবাসিক ঠিকনা

গাওঁ :

থানা :

ডাক :

পিন :

ম'বাইল নম্বৰ :

সাক্ষীৰ পৰিয়ালৰ সদস্যসকলৰ
নাম আৰু অন্যান্য বিৱৰণ যি
সকলে ভাবুকি লাভ কৰিছে
বা অনুভৱ কৰিছে

যোগাযোগৰ বিৱৰন

ম'বাইল নম্বৰ/ইমেইল আইডি :

২) অপৰাধমূলক বিষয়ৰ বিৱৰন

এফ আই আৰ নম্বৰ :

ধাৰা সমূহৰ অধীনত :

থানা :

জিলা :

সাধাৰন ডায়েৰী প্ৰবেশ নম্বৰ

(General Dairy Entry no.)

(যদি এফ আই আৰ এতিয়াও পঞ্জীয়ন

হোৱা নাই) :

অপৰাধমূলক গোচৰ নম্বৰ :

(ব্যক্তিগত অভিযোগৰ ক্ষেত্ৰত)

৩) অভিযুক্তৰ বিৱৰন (যদি উপলব্ধ/জ্ঞাত)

নাম :

ঠিকনা :

গাওঁ :

থানা :

জিলা :

ফোন নম্বব :

ইমেইল নম্বৰ :

৪) ব্যক্তিজনক ভাবুকি দিয়া/ভাবুকি দিয়াৰ সন্দেহ কৰা লোকৰ নাম আৰু অন্যান্য বিশেষত্ব বৈশিষ্ট্য সমূহ

৫) ভাবুকিৰ ধাৰণাৰ প্ৰকৃতি (অনুগ্ৰহ কৰি বিষয়টোত পোৱা ভাবুকিৰ চমু বিৱৰণ নিৰ্দিষ্ট তাৰিখ, স্থান, ধৰণ আৰু ব্যৱহাৰ কৰা শব্দৰ সৈতে দিয়ক) :

৬) সাক্ষীয়ে বিছৰা সাক্ষী সুৰক্ষা ব্যৱস্থাৰ প্ৰকাৰ :

৭) অন্তৰৰ্তীকালীন/জৰুৰী সাক্ষী সুৰক্ষাৰ প্ৰয়োজনীয়তাৰ বিৱৰণ, যদি প্ৰয়োজন হয়-

(অতিৰিক্ত তথ্য দিয়াৰ বাবে আবেদনকাৰী/সাক্ষীয়ে অতিৰিক্ত শ্বীট ব্যবহাৰ কৰিব পাৰে)

স্বাক্ষৰৰ সৈতে সম্পূৰ্ণ নাম :

নাম :

তাৰিখ :

স্থান :

অঙ্গীকাৰ

মই প্রতিশ্রুতি দিছো যে, মই উপযুক্ত কর্তৃপক্ষ, সাক্ষী সুৰক্ষা কোষ আৰু ৰাজ্যৰ গৃহ বিভাগৰ লগত সম্পূর্ণ সহযোগিতা কৰিম। :

মই আবেদনত মোৰ দ্বাৰা প্রদান কৰা তথ্যসমূহ মোৰ জ্ঞান বিশ্বাস অনুসৰি সত্য আৰু শুদ্ধ বুলি প্রমান কৰিছো। :

মই বুজি পাওঁ যে যদিহে এই আবেদনত মোৰ দ্বাৰা দিয়া তথ্য ভূৱা বুলি ধৰা পৰে, তেন্তে আঁচনিখনৰ অধীনত যোগ্য প্রাধিকাৰীয়ে সাক্ষী সুৰক্ষা পুঁজিৰ পৰা মোৰ ওপৰত হোৱা খৰচ পুনঃ আদায় লোৱাৰ অধিকাৰ সংৰক্ষন থাকিব।

স্বাক্ষৰৰ সৈতে সম্পূৰ্ণ নাম :

তাৰিখ :

স্থান :