



राष्ट्रीय विधिक सेवा प्राधिकरण
NATIONAL LEGAL SERVICES AUTHORITY
(Constituted under the Legal Services Authorities Act, 1987)

सुरेन्द्र एस.राठी

निदेशक

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(Delhi Higher Judicial Service)

Director

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02.05.2018

To,

1. The Secretary
Ministry of Home Affairs
2. The Registrar General
All Hon'ble High Courts
3. The Member Secretary
All the State Legal Services Authorities
4. The Director General
BPR & D
5. The Director General of Police/Police Commissioners
All the States/UTs

Sub: Inviting suggestions on the Witness Protection Scheme-2018 (Draft-2) prepared by NALSA and BPR & D -reg.

Sir/Madam,

Please find attached herewith "**Witness Protection Scheme-2018**" (Draft-2) prepared by NALSA and BPR & D for Ministry of Home Affairs in terms of directions of Hon'ble Supreme Court order in case titled Prem Chand Vs. State of NCT of Delhi SLP Criminal No. 674/2017.

2. NALSA has placed a copy of the Scheme before the Hon'ble Supreme Court and undersigned appeared before the bench of Hon'ble Mr. Justice S.A. Bobde and Hon'ble Mr. Justice L. Nageswara Rao of Supreme Court of India today. Bench has been pleased to permit NALSA to circulate the aforesaid Scheme to all stakeholders and post it on NALSA's website to invite suggestions/comments. The aforesaid Scheme is being uploaded on the website of NALSA i.e. www.nalsa.gov.in

3. You are requested to furnish your comments/suggestions on the **Witness Protection Scheme-2018 (Draft-2)** to this Office by **21.05.2018** on e-mail at www.nalsa-dla@nic.in

Yours faithfully,

(Surinder S. Rathi)

Director

Encls: as above

Draft - 2

Witness Protection Scheme, 2018

BPR&D - NALSA

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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 and investigations 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 influential people, witnesses turn hostile because of threat to life and property. Witnesses find that there is no legal obligation by the state for extending any security.

Hon'ble Supreme Court of India also held in State of Gujrat 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 SC while defining Fair Trial said "If the witnesses get threatened or are forced to give false evidence that also would not result in a fair trial".

Conviction rate in murder and rape is around 10-12% only as witness turn hostile. First ever reference to Witness Protection in India came in 14th Law Commission Report in 1958. Fresh reference is in 154th, 178th and dedicated 198th Law Commission Report. The NN Vohra Committee Report, 1993 said Criminalisation of Indian Polity is striking the very foundation.

Hon'ble Supreme Court said in Best Bakery case, "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.

In recent years organized crime has grown and is becoming stronger and more diverse. In the investigation and prosecution of crime, particularly the more serious and complex forms of organized crime, it is essential that witnesses, the cornerstones for successful investigation and prosecution, have trust in criminal

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justice system. Witnesses need to have the confidence to come forward to assist law enforcement and prosecutorial authorities. They need to be assured that they will receive support and protection from intimidation and the harm that criminal groups may seek to inflict upon them in attempts to discourage or punish them from co-operating. Hence, legislative measures to emphasize prohibition against tampering of witnesses have become the imminent and inevitable need of the day. Even Law Commission of India has recommended that witnesses should be protected from the wrath of the accused in any eventuality.

As such witnesses should be entitled to the following rights:

- i) Right to give evidence anonymously
- ii) Right to protection from intimidation and harm
- iii) Right to be treated with dignity and compassion and respect of privacy
- iv) Right to information of the status of the investigation and prosecution of the crime
- v) Right to secure waiting place while at Court proceedings
- vi) Right to transportation and lodging arrangements

Scope of the Scheme:

Witness Protection may be as simple as providing a police escort to the Courtroom, offering temporary residence in a safe house or using modern communication technology (such as video conferencing) for recording of testimony. In other more complex cases, where cooperation by a witness is critical to successful prosecution of a powerful criminal group, extraordinary measures are required to ensure the witness's safety viz. anonymity, relocation of the witness under a new identity in a new, undisclosed place of residence. Witness protection, especially in its practical operation, must therefore be viewed on a case by case basis in meaningful assistance to the witnesses.

1. SHORT TITLE AND COMMENCEMENT:

- (a) The Scheme shall be called "**Witness Protection Scheme, 2018**"
- (b) It shall extend to the whole of the India except the State of Jammu & Kashmir
- (c) It shall come into force from the date of Notification.

Part I

2. DEFINITIONS:

- (a) "**Appellate Authority**" means Chairperson, DLSA as against order passed by Competent Authority under Part-II & III of the Scheme.

Member Secretary, SLSA as against order passed by Competent Authority under Part-IV & V of the Scheme.

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

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- (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) **“Competent Authority”** means 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. For the purpose of orders passed Part IV & V, the Competent Authority will be Chairperson, DLSAs;
- (e) **“Family Member”** includes parents/guardian, spouse, siblings, children, grandchildren of the witness;
- (f) **"Form"** means “Witness Protection Application Form” appended to this Scheme;
- (g) **"Government"** means the Government of India and Government of States/UTs;
- (h) **“In Camera Proceedings”** means proceedings wherein the public and press are not allowed to participate;
- (i) **“Live Link”** means and include a live television link or other such arrangement whereby a witness, while absent from the courtroom can depose in the matter;
- (j) **“Protection Measures”** means action taken by the Court taking while evidence during testimony to ensure that witnesses may testify free of intimidation or fear for their and their family members life or reputation or
- (k) **"Serious Offences"** means those offences which are punishable with death or life imprisonment or an imprisonment not less than seven years;
- (l) **"State Legal Services Authority"** means the State Legal Services Authority, as defined in Section 6 of the Legal Services Authorities Act, 1987 (39 of 1987);
- (m) **"District Legal Services Authority"** means the District Legal Services Authority, as defined in Section 9 of the Legal Services Authorities Act, 1987 (39 of 1987);
- (n) **"Threat Analysis Report"** means a detailed report prepared and submitted by the Commissioner of Police in Commissionerates/ SSP in District Police investigating the case qua the seriousness and credibility of the threat

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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 steps which deserves to be taken in the matter;

- (o) **“Witness”** means any person, who possesses information or document about any crime regarded by the competent authority as being material to any Criminal proceedings and who has made a statement, or who has given or agreed or is required to give evidence in relation to such proceedings;
- (p) **“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;
- (q) **“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;
- (r) **“Witness Protection Order”** means an order passed by the Competent Authority detailing the steps to be taken for ensuring the safety of witness from threats to his or his family member’s life, reputation or property. It also includes interim order, if any passed, during the pendency of Witness Protection Application;
- (s) **“Witness Protection Cell”** means a dedicated Cell of State/UT Police or Central Police Agencies assigned the duty to implement the witness protection order. It shall be responsible for the security as per witness protection order. The Cell shall be headed by the Addl. CP/DCP/Addl. DCP.

Part II

3. CATEGORIES OF WITNESS AS PER THREAT PERCEPTION:

Category ‘A’ : Where the threat extends to life of witness or his family members and their normal way of living is affected for a substantial period, during investigation/trial or even thereafter.

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

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 process.

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 fines imposed (under section 357 of the CrPC) ordered to be deposited by the courts/tribunals in the Witness Protection Fund
 - iii. Donations/contributions from International/National/Philanthropist/ Charitable Institutions/Organizations and individuals permitted by Central/State Governments.
 - 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 as per area jurisdiction along with supporting documents, if any, in duplicate either directly or through the trial court or Superintendent of Prison.

6. PROCEDURE FOR PROCESSING THE APPLICATION:

- (a) 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 Commissioner of Police in Commissionerates/ SSP in District Police investigating the case.
- (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.
- (c) The Threat Analysis Report shall be prepared expeditiously by the Commissioner of Police in Commissionerates/ SSP in District Police

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- investigating the case while maintaining full confidentiality and it shall reach the Competent Authority within five working days of receipt of the order.
- (d) In the report, the Commissioner of Police in Commissionerates/ SSP in District Police investigating the case shall categorize the threat perception and shall also submit the suggestive measures for providing adequate protection to the witness or his family as contained in clause 7 of the scheme or any other measure found appropriate.
 - (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/CPO. 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 or/and 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, a fresh Threat Analysis Report may be called from the Commissioner of Police in Commissionerates/ SSP in District Police.

7. TYPES OF PROTECTION MEASURES:

The witness protection measures ordered shall be proportional to the threat and for a specific duration. They 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;

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- (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 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 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 new vocation/profession, if desired;
- (o) Any other form of protection measures considered necessary, and specifically, those requested by the witness.

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 serious offence, an application for seeking identity protection can be filed in the prescribed form before the Competent Authority.

Upon receipt of the application, the Competent Authority shall call for the Threat Analysis Report and 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 concealment of identity of witness is passed by the Competent Authority, it shall be responsibility of Department/Ministry of Home of State/UT/Witness Protection Cell to ensure that identity of such witness/his or

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her family members including name/parentage/occupation/address/digital footprints is 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 perception by the Commissioner of Police in Commissionerates/ SSP in District Police investigating the case, 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 perception by the Commissioner of Police in Commissionerates/ SSP in District Police investigating the case, 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 by the Witness Protection Fund.

Part VI

12. WITNESSES TO BE APPRISED OF THE SCHEME:

It shall be mandatory for Investigating Officer/Court to inform each and every witness about the existence of "Witness Protection Scheme" and its salient features.

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13. CONFIDENTIALITY AND PRESERVATION OF RECORDS:

The Competent Authority, Department/Ministry of Home of State/UT/Witness Protection Cell's officials, SHO, IO, SSP/CP and all other concerned officials including Lawyers from both sides shall maintain full confidentiality and shall ensure that under no circumstance, any record, document or information qua the proceedings under this scheme shall be shared with any person in any manner except with the Trial Court/Appellate Court and that to 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 three years 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 State Legal Service Authority can initiate proceedings for recovery of the expenditure incurred from the Witness Protection Fund.

15. REVIEW & APPEAL:

In case the witness or the police authorities are aggrieved by the decisions of the Competent Authority, a review application may be filed within 30 days of passing of the orders by the Competent Authority.

In case the witness/police authorities are aggrieved by the review orders of the Competent Authority, an appeal may be filed before the Chairperson, DLSA against the orders passed by Secretary, DLSA under Part-II & III of the Scheme.

Before Member Secretary, State Legal Service Authority against orders passed by Competent Authority under Part-IV & V of the Scheme.

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Witness Protection Application

under

Witness Protection Scheme, 2018

Before,

(To be filed in duplicate)

**The Competent Authority,
District Legal Services Authority**

.....

Application for:

- | | |
|--------------------------------|----------------------|
| 1. Witness Protection | <input type="text"/> |
| 2. Witness Identity Protection | <input type="text"/> |
| 3. New Identity | <input type="text"/> |
| 4. Witness Relocation | <input type="text"/> |

1.	Particulars of the Witness (Fill in Capital): 1) Name 2) Age 3) Father's Name 4) Residential Address 5) Is witness desirous of Identity protection/new identity/witness relocation, if yes, give reasons 6) Name and other details of family members of the witness who are receiving or perceiving threats 7) Is witness desirous of relocation, if yes, please suggest the place and manner of it.	
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)	
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	

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		----- ----- -----
5.	Nature of threat perception. Please give brief details of threat received or perceived in the matter with specific date, place, mode and words used	----- ----- ----- -----
6.	Nature of witness protection measures prayed by/for the witness	----- ----- ----- -----
7.	Details of Interim / urgent Witness Protection needs, if required	----- ----- ----- -----

- Witness shall file a separate undertaking under his/her signature that he/she shall fully co-operate with the Competent Authorities and Department/Ministry of Home of State/UT and Witness Protection Cell.
- Applicant/witness can use extra sheets for giving additional information.

Date:

(Full Name with signature)

Place:.....