

Witness Protection Scheme,2018 :The New Paradigm

Why this Scheme?

“Witnesses are eyes and ears of the Court”

In a society governed by a Rule of Law, it is imperative to ensure that investigation, prosecution and trial of criminal offences is not prejudiced because of threats or intimidation to witnesses. The need to protect witnesses has been emphasised by the Hon’ble Supreme Court of India in *“Zahira Habibulla H. sheikh and Another v. State of Gujarat” 2004 (4) SCC 158 SC*. While defining Fair Trial, the Hon’ble Supreme Court observed that “If the witnesses get threatened or are forced to give false evidence that also would not result in fair trial”.

In 1958, the 14th Report of Law Commission indicated about the need to protect witnesses. The 4th Report of the National Police Commission, 1980 also dealt with the said subject. In 154th Report (1996) The Law Commission dealt with the plight of the witnesses. The report spelt out the inconvenience and the lack of facilities and the threat from the accused to the witnesses. The 172 and 178th report also dealt with the said subject and recommended that witnesses should be protected from the wrath of the accused in any eventuality. The Hon’ble Supreme Court also repeatedly observed about the importance to give protection to witnesses.

In 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. At present there is no law/scheme holistically at the National level for protection of witnesses. Keeping in view the said scenario, “Witness Protection Scheme, 2018” has been drafted/devised by NALSA & BPR&D.

Framework of the proposed Scheme

The scheme consists of six Parts, and all the parts are inter-related. Part I consists of the definitions of the various terms used in the Scheme such as “Witness Protection Application, Witness Protection Fund, Witness Protection Order, Witness Protection Cell, Competent Authority”.

The entire proceedings regarding filing of application etc. take place before the Competent Authority who is empowered under the Scheme to pass orders for protection of the witness. The Competent Authority under the scheme has been defined to mean 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 under Part IV & V, the Competent Authority will be Chairperson, DLSAs;

The second part of the scheme spells out the categories of witnesses as per the threat perceptions. It also spells out the creation of State Witness Protection Fund. This part contains the procedural aspects such as filing and processing of application for protection. Types of protection measures are also mentioned in the said part. Parts III to V consist of the special witness protection measures which may be required in much graver scenarios. The last part spells out miscellaneous aspects related to the operational aspects of the scheme. It also mentions about the right to review and appeal.

The Approach:-

The edifice of the scheme stands on the categorisation of the witnesses as per the threat perception. Three categories keeping in view of the degree of threat has been conceptualised i.e. Category no. A pertains to the scenario where the threat is graver and extends to life of a witness or his family members; category B comprises that degree where threat is to the safety, reputation, property of witness or family members, and lastly, the category C comprises of the degree where threats are more moderate as compared to the threats conceptualised in the categories A and B. Category C extends to harassment or intimidation of the witness or his family members reputation.

State Witness Protection Fund has been proposed under the Scheme. The sources of the State Witness Protection Fund are: Budgetary allocation made in the Annual Budget by the State Government; 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; Donations/contributions from International/National/Philanthropist/ Charitable Institutions/Organizations and

individuals permitted by Central/State Governments and Funds contributed under Corporate Social Responsibility.

Procedural framework:-

- Filing of application: 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.
- 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.
- 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.
- The Threat Analysis Report shall be prepared expeditiously by the Commissioner of Police in Commissionerates/ SSP in District Police investigating the case while maintaining full confidentiality and it shall reach the Competent Authority within five working days of receipt of the order.
- 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.
- 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.
- All the hearings on Witness Protection Application shall be held *in-camera* by the Competent Authority while maintaining full confidentiality.
- An application shall be disposed of within five working days of receipt of Threat Analysis Report from the Police authorities.
- 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.

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

Types of Protection Measures:

The types of Protection measures envisaged under the Scheme are to be applied in proportion to the threat. The same are not expected to go for infinite time, but are expected to be for a specific duration on need basis which is to be reviewed regularly. The measures provided for the protection of the witnesses include the following:-

- (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 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;

Apart from the above measures, any other form of protection measures considered necessary, and specifically, those requested by the witness can be ordered by Competent Authority.

Some other measures, which can be resorted to in graver scenarios are 'Protection of Identity', 'Change of Identity' and 'Relocation of Witness'. For protection of identity, an application for seeking identity protection can be filed in the prescribed form before the Competent Authority. The Competent Authority, keeping in view the 'Threat Analysis Report and after examining the witness, his family members or any other person can pass an order for concealment of identity of witness. Similarly, in some cases keeping in view the threat perception report a new identity may be conferred. In appropriate cases relocation of witnesses can also be ordered to a safer place within the State/UT or territory of the India Union.

Review and Appeal

This scheme provides review and appeal in case witness or the police authority is aggrieved by the decision of the Competent Authority. Review can be filed before the Competent Authority within 30 days, and an appeal can be filed before the Chairperson of DLSA in case aggrieved by the review order passed by Secretary, DLSA. The appeal against the orders passed by Competent Authority under Parts IV & V of the Scheme can be filed before Member Secretary, State Legal Services Authority.

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 to recoup the Witness Protection Fund.

Conclusion:-

The Witness Protection Scheme, 2018 (Draft) is a first attempt at the National level to holistically provide for the protection of the witnesses which will go a long way in eliminating secondary victimization. The witnesses being eyes and ears of justice, and play an important role in bringing perpetrators of crime to justice. This scheme attempts at ensuring that witnesses receive appropriate and adequate protection. This will go a long way in strengthening the Criminal Justice System in the Country and will consequently enhance National Security Scenario.

NALSA & BPR&D

Sampat Meena, IG/Director (R&CA) BPR&D

Group Leader-I

(Witness Protection Scheme)