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Delhi Witness Protection Scheme, 2015

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SPECIMEN APPLICATION FORM

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:

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 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.

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 videoconferencing) 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, resettlement 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.

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GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF DELHI

The Department of Law, Justice & Legislative Affairs

8th Level, C-Wing of the Delhi Secretariat, I.P. Estate, New Delhi-110001

NOTIFICATION

Delhi, the day of, 2015

No.F.61(.....)/DLJLA/2015: The Lt. Governor of the National Capital Territory of Delhi is pleased to make the following Scheme for Protection of Witnesses in Delhi while taking a holistic approach to witness protection needs.

1. SHORT TITLE AND COMMENCEMENT:

- (a) The Scheme shall be called “**Delhi Witness Protection Scheme, 2015**”
- (b) It shall extend to the whole of the National Capital Territory of Delhi (within the jurisdiction of Government of NCT of Delhi)
- (c) It shall come into force from the date of Notification.

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;
- (c) "**Competent Authority**" means Member Secretary/Officer on Special Duty, Delhi State Legal Services Authority and they alone can pass directions 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;
- (d) "**Family Member**" includes parents, spouse, siblings, children, grand children of the witness;
- (e) "**Form**" means “Witness Protection Application Form” appended to this Scheme;
- (f) "**Government**" means the Government of National Capital Territory of Delhi;

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- (g) **"In Camera Proceedings"** means proceedings wherein the public and press are not allowed to participate;
- (h) **"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;
- (i) **"Protection Measures"** means action taken by the Court taking evidence during testimony to ensure that witnesses may testify free of intimidation or fear for their and their family members life or reputation or property; such measures include, but are not limited to, videoconferencing, avoiding face to face contact between witness and the accused and withholding of details of a witness's identity;
- (j) **"Serious Offences"** means those offences which are punishable with death or life imprisonment or an imprisonment not less than seven years;
- (k) **"State Legal Services Authority"** means the Delhi State Legal Services Authority, as defined in Section 6 of the Legal Services Authorities Act, 1987 (39 of 1987);
- (l) **"Threat Analysis Report"** means a detailed report prepared and submitted by the Addl. CP/DCP/Addl. DCP of the District/Unit investigating the case qua 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 steps which deserves to be taken in the matter;

- (m) **"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 to give evidence in relation to such proceedings;
- (n) **"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 concerned and the same shall preferably be got forwarded through the Prosecutor concerned;

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- (o) **“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;
- (p) **“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;
- (q) **“Witness Protection Cell”** means a dedicated Cell of Delhi Police assigned the duty to implement the witness protection order. It shall be responsible for the security as per threat perception. The Cell shall be headed by the Addl. CP/DCP/Addl. DCP.

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.
- 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 and intimidation of the witness or his family member's, reputation or property, during the investigation process.

4. 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, shall be met.
- (b) The Witness Protection Fund shall comprise the following:-
 - i. Budgetary allocation made in the Annual Budget by the Government;
 - ii. Receipt of amount of fines imposed (under section 357 of the Code and ordered to be deposited by the courts in the Witness Protection Fund
 - iii. Donations/contributions from International/National/Philanthropist/Charitable Institutions/Organizations and individuals.

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- (c) The said Fund shall be operated by the Divisional Commissioner, Government of National Capital Territory of Delhi.

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.

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 Addl. CP/DCP/Addl. DCP of the District/Unit 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.
- (c) The Threat Analysis Report shall be prepared expeditiously by the Addl. CP/DCP/Addl. DCP of the District/Unit 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 Addl. CP/DCP/Addl. DCP of the District/Unit 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.
- (e) While processing the application for witness protection, the Competent Authority shall also interact 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* in the chamber of the Competent Authority while maintaining full confidentiality.
- (g) An application shall be disposed of within seven working days of its filing.
- (h) The Witness Protection Order passed by the Competent Authority shall be implemented by the Witness Protection Cell. Overall responsibility of implementation of all witness protection orders passed by the Competent Authority shall lie on the Commissioner of Police, Delhi; However the Witness Protection Order passed by the Competent Authority for change of identity or/and relocation shall be implemented by the Divisional Commissioner, GNCT Delhi.
- (i) Upon passing of a Witness Protection Order, the Witness Protection Cell shall file a monthly follow-up report before the Competent Authority, in each case in consultation with the Addl. CP/DCP/Addl. DCP of the District/Unit investigating the case.

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7. TYPES OF PROTECTION:

The witness protection measures ordered shall be proportional to the threat and for limited 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;
- (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.

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.

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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 Divisional Commissioner, GNCT Delhi/Witness Protection Cell to ensure that identity of such witness 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.

10. 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.

11. CONFIDENTIALITY AND PRESERVATION OF RECORDS:

The Competent Authority, Divisional Commissioner, GNCT Delhi, Witness Protection Cell's officials, SHO, IO 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.

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Witness Protection Application

under

Delhi Witness Protection Scheme, 2015

Before,

(To be filed in duplicate)

**The Competent Authority,
Delhi State Legal Services Authority
Patiala House Courts,
Delhi.**

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 order, 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: 1) Name 2) Address	----- ----- -----
4.	Name & other particulars of the person giving/suspected of giving threats	----- ----- -----
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	----- ----- ----- -----

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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 Authority and Divisional Commissioner, GNCT Delhi/Witness Protection Cell.

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

Date:

Place:.....

(Full Name with signature)