

READING MATERIAL ON HUMAN TRAFFICKING

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Victim- friendly procedures/methods

1. **Court House Tour** - A pre-trial tour of the courtroom and court complex by the Support Persons or a para-legal volunteer to familiarize a vulnerable witness with the environment and the basic process of adjudication and role of court officials.
2. **In-Camera Proceedings** - Trials of victims of sexual assault must be held in-camera. The court should allow only those persons who are necessary to be present during the proceedings in the court.
3. **Best Interest of the Child** - Means the basis of any decision taken regarding the child, to ensure fulfilment of the child's basic rights and needs, identity, social well-being and physical, emotional and intellectual development.
4. **Support person-** Support Persons may be assigned by the Child Welfare Committee under the *Protection of Children from Sexual Offences Rules, 2020* to render assistance to the child through the process of investigation and trial, or any other person assisting a child in the pre-trial or trial process in respect of an offence under the *Protection of Children from Sexual Offences Act*. A Support person or para legal volunteer provided by the Legal Services Authority under the *Juvenile Justice (Care and Protection of Children) Model Rules, 2016*, or any other person appointed by the court to provide support, including psycho-social support, should accompany and assist the vulnerable witness, whether minor or major, when testifying or attending judicial proceedings.
5. Use of comfort items or support items such as any article of choice of the vulnerable witness which may have a calming effect, at the time of deposition (stuffed toys, blankets, a book etc). Judges may be allowed to be cared by the witness during deposition in the Court.
6. **Testimonial Aids** - Aids like screens; single visibility mirrors, curtains, live links, image and/ or voice altering device; or any other technical device, facilities and equipment may be used.
7. **Secondary Victimization-** Prevent Secondary victimization that occurs not as a direct result of a criminal act but through the response of institutions and individuals to the victim. All interviews with the victim must be in a victim friendly manner. The victim must not feel pressured or judged. Be mindful of secondary victimisation. When recording the evidence from the victim remember to ensure, that the victim narrates the incident from the beginning

giving details of places, names of all persons involved. Help the victim understand their role in the proceedings.

8. Waiting Room - A safe place for vulnerable witnesses where they can wait, can be provided for such witnesses. Access to crèche facilities within the court premises if possible be made available to enable vulnerable witnesses who may require child care facilities on the date of their appearance in court.

9. Special Measures - Means and includes the use of legislative provisions, and any mode, method and instrument, etc. considered necessary for providing assistance in recording deposition of vulnerable witnesses.

10. Live Link - Means and includes a live television link, audio-video electronic means or other arrangement whereby a witness, while not being physically present in the courtroom is nevertheless present in the courtroom by remote communication using technology to give evidence and be cross-examined. In order to take a decision of usage of a live-link the judge may question the vulnerable witness in chambers, or in some comfortable place other than the courtroom, in the presence of the support person, guardian, prosecutor, and counsel for the parties. The question of the judge shall not be related to the issue at trial but to the feelings of the vulnerable witness about testifying in the courtroom.

11. The Court shall ensure that adequate time and opportunity is given to refresh the memory of vulnerable witnesses. Ensure questions are kept simple and stated in a form appropriate to the comprehension and development level of the vulnerable witness. Excessively long questions should be rephrased and thereafter put to witness.

12. Protect vulnerable witnesses from harassment or undue embarrassment, character assassination, aggressive questioning, and ensure that dignity of the witness is maintained at all times during the trial.

13. In cases involving multiple accused persons or defendants, take steps to minimize repetition of questions. The court may ask counsel for different parties to provide questions in advance.

14. Concealment of identity of witness - The disclosure of the name, address, school, family, relatives, neighbourhood or any other information which may lead to the identification of a vulnerable witness in print, electronics, social media, etc. Is prohibited and must not be made known to the public during investigation, trial and post-trial stage.

15. Protective orders - The depositions of the vulnerable witness recorded by video link shall not be video recorded except under reasoned order requiring the special measures by the judge. However where any video or audio recording of a vulnerable witness is made, it shall be under a protective order that provides as follows:

(i) A transcript of the testimony of the vulnerable witness shall be prepared and maintained on record of the case. Copies of such transcript shall be furnished to the parties of the case.

(ii) Recording may be viewed only by parties, their counsel, their expert witness, and the guardian ad litem in the office of the court, following a procedure similar to inspection of documents.

(iii) No persons shall be granted access to the recording, or any part thereof unless they sign a written affirmation that they have received and read a copy of the protective order; that they submit to the jurisdiction of the court with respect to the protective order; and that in case of violation thereof, they will be subject to the penalties provided by law.

(iv) Any recording, if made available to the parties or their counsel, shall bear the following cautionary notice:

"This object or document and the contents thereof are subject to a protective order issued by the court in (case title), (case number). They shall not be examined, inspected, read, viewed, or copied by any person, or disclosed to any portion shall be made, given, sold, or shown to any person without prior court order. Any person violating such protective order is subject to the contempt power of the court and other penalties prescribed by law."

(v) No recording shall be given, loaned, sold, or shown to any person except as ordered by the court. This protective order shall remain in full force and effect until further order of the court.

16. If the Court find a victim or a witness is in need of protection or if such a person makes an application for a protection order, the Court may pass a protection order as found appropriate for the victim on the basis of the threat perception, under The *Witness Protection Scheme 2018*.

17. Speedy Trial : As far as possible complete the trial in a time- bound manner to ensure justice to the victim and as a strong deterrent to traffickers. In case of trial of offences involving section 376 IPC the trial as far as possible be completed within 2 months as provided under section 309 CrPC. For

offences under Protection Of Children from Sexual Offences Act, the Special Court is to complete the trial as far as possible within one year from the date of taking cognizance of the offence.

18. Trauma-Informed Training : Provide training to legal professionals, including judges, prosecutors, and defense attorneys, on trauma-informed practices to better understand and address the needs of victims who have experienced trauma.

19. Victim Support Units : Establish specialized victim support units within the court system to offer guidance, emotional support, and information to victims throughout their involvement in the legal process.

20. Private Waiting Areas : Provide separate waiting areas and entrances for victims to minimize their exposure to the accused and their supporters, reducing potential intimidation and discomfort.

21. Cross-Examination Guidelines : During cross-examinations of victims, ensure that it is respectful, non-confrontational, and focus on relevant information rather than re-traumatizing victims.

22. Remote Testimony : Implement video conferencing and other technology to allow victims to testify remotely if being physically present in court could be traumatic or risky for them.

23. Victim Advocates : See that a trained victim advocate is assigned to the victim to assist victims with court processes, provide information, accompany them to court, and act as a liaison between victims and legal professionals.

24. Victim Impact Statements : Allow victims to submit victim impact statements to the court, enabling them to express the personal, emotional, and financial impact of the crime on their lives.

25. Security Measures : Ensure the courtroom is equipped with security measures to protect victims, such as security personnel, in camera proceedings and confidentiality protections.

26. Privacy Protections : Protect the privacy of victims by limiting public access to certain court records, sealing sensitive documents, and implementing measures to shield victims' personal information.

27. Cultural Sensitivity : Train court staff to be culturally sensitive, especially when dealing with victims from diverse backgrounds, to ensure that their unique needs and concerns are addressed.

28. Transparency and Communication : Maintain open communication with victims about the progress of their cases, court dates, and outcomes, helping them feel more informed and involved in the process.

29. No Contact Orders : Issue and enforce no-contact orders to prevent accused individuals from approaching or contacting victims during legal proceedings.

30. Reduced Waiting Times : Minimize waiting times for victims in court to reduce stress and anxiety, ensuring that their time and emotions are respected.

31. Referral to Support Services : Provide victims with information on support services, such as counselling, legal assistance, and financial aid, to help them cope with the aftermath of the crime.

32. Courtroom Decorum : Ensure that courtroom decorum is maintained, and disruptive behaviour is addressed promptly to create a respectful environment for victims.

33. Inclusive Language : Encourage the use of inclusive and non-discriminatory language and behaviours to avoid re-victimizing or alienating victims.

These victim-friendly procedures are designed to make the court process less intimidating and more supportive for victims, recognizing the importance of their well-being and rights within the justice system.

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Witness Protection Scheme, 2018

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Witness Protection Scheme, 2018

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;

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- (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

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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;

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- (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.

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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.

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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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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:

Various Government Schemes providing monetary relief/ compensation/ rehabilitation to victims.

Victims of trafficking are eligible for compensation/relief under the following provisions/ schemes.

1.Under Section 357 A Cr.P.C - Court may pass an order for awarding of compensation to a victim for suffering loss and injury.

2.Victim Compensation Scheme - The Court can recommend payment of compensation to the victim or his/her dependants and the District Legal Services Authority or State Legal Services Authority as the case may be shall, process payment of compensation to be awarded under this scheme.

3. District Magistrate/Executive Magistrate - Can also make arrangements for providing immediate relief in cash under **Rule 12 (4)/SC/ST Act**.

4. Immediate financial assistance of ₹ 20,000/- is also available under the **Central Sector Scheme for Rehabilitation of Bonded Labourer 2016**. This scheme is applicable to cases of trafficking, bonded labour, child labour, forced prostitution, begging etc. Additional compensation up to ₹ 3,00,000/- is available on issuing of release certificate by the District Magistrate.

5. Back wages at the rate of minimum wage can be awarded to the victim for the period of employment in case of trafficking for forced labour.

6. In case of children, they are also eligible to be awarded compensation as under: -

As per *MC Mehta vs. State Of Tamil Nadu and Ors. AIR 1997 SCC 699*,

* ₹ 20,000/- per child are to be paid by the employer to a "Child Labour Rehabilitation-cum-Welfare Fund" to be used only for the benefit of that child.

* In addition, the Government is to provide employment to an adult family member of the child or contribute ₹ 5000/-per child to this fund.

7. In case of child labour, **under See 14(8) of Child Labour (Prohibition and Regulation Act 2016**, a Child and Adolescent Labour Fund is to be formed in every district, where an amount of ₹ 15,000/-is to be credited by the Government for each child. The amount deposited and interest accrued shall be given to the child as per the rules to **Child Labour (Prohibition and Regulation Act 2016**, is in addition to the back wages.

8. Court may pass an order directly to the relevant department to get the victim's Aadhaar card, BPL card made, any other identity card/address proof and bank account if required for availing the benefits under various schemes.

9. Children rescued from labour or adolescents rescued from hazardous employment, can be linked to suitable education facilities such as:

- If the child is between 5-8 years she/he can be linked directly to the **Sarva Shiksha Abhiyan** to access their Right to Education.
- A child between 9-14 years can attend a one-year bridge education in a **National Child Labour Project (NCLP)** school if available and then be linked to the **Sarva Shiksha Abhiyan** program.
- Children rescued from other forms of exploitation who are below 14 years can be linked to the **Sarva Shiksha Abhiyan** program. Older children maybe linked to the local skill development program.
- The **District Legal Services Authority/Taluk Legal Services Committee** can assist such children and their guardians.

10. The Special Court can also grant interim compensation **U/S 9 of the POCSO Rules 2020**, either on its own or an application made by or on behalf of the victim for the victim's relief and rehabilitation at any stage after the FIR is filed.

11. Even if accused is not convicted or is not traceable or identified but if the court finds the victim has suffered trauma, loss or injury, court can recommend award of compensation.

12. NALSA (Victims of Trafficking and Commercial Sexual Exploitation) Scheme 2015.

13. Ujjawla Scheme under the Ministry of Women and Child Welfare

SOME LANDMARK JUDGEMENTS

- ***Smruti Tukaram Badade Vs. State of Maharashtra, 2022***

Live law (SC) 80 - Some of the most challenging cases before judges during the course of their careers are those involving vulnerable witnesses such as children, victim of sexual offences or domestic violence, persons with disabilities, and witnesses experiencing threats to their life and property, among others. The judicial process is less traumatic and secondary victimization can be minimised. Sensitive engagement and suitable modification of existing procedures (within the framework of the law), while ensuring the rights of the accused or the opposite party, can significantly impact the quality of deposition by vulnerable witness and potentially the outcome of a trial. The Court has provided guidelines for ensuring a safe and conducive environment for recording evidence of vulnerable witnesses.

- ***State of Madhya Pradesh & Ors. Vs. XYZ***, SLP(Crl) No 1674 of 2022- It is the duty and responsibility of trial Courts to deal with the aggrieved persons before them in an appropriate manner.

- ***Nipun Saxena Vs. Union of India***, WP(C) no. 565 of 2012, (2019) 2 SCC 703 -Right to protection of identity of the victim of sexual offences (**Section 327 (3), CrPC of Section 23, POCSO Act.**

- ***Mahender Chawla Vs. Union of India***, WP (Crl) 156 of 2016 decided on 5.12.2018) - It is now mandatory for all the states and union territories to enforce the Witness Protection Scheme, 2018 in letter and spirit in order to ensure that a witness has the "right to testify in courts in a free and fair manner without any pressure and threat whatsoever."

- ***Sampurna Behura Vs. union of India & Ors***, 5 (2018) 4 SCC 433 - The Supreme Court encourages the use of technology in court proceedings.

- ***State of Maharashtra Vs. Bandu @ Daulat*** (2018) 11 SCC 163 - Special centres to be set up in each state in order to facilitate depositions by vulnerable witnesses, including victims of sexual offences.
- ***Bachpan Bachao Andolon Vs. U.O.I.*** - (2014) 16 SCC 612) and (2011) 5 SCC 1 - A landmark Judgement which has paved the way for treatment of child victims and provides guidelines on Human Trafficking.
- ***Madhya Pradesh vs. Kashiram***, 2009 CrLJ 1530 - Court will be failing in its duty if the accused's sentence is not consistent with the brutality inflicted on the victim.
- ***Virender Vs. State of NCT of Delhi***, 2009 SCC Online Del 3083 - It is to be noted that the embarrassment, and reservation of those concerned with the proceedings including the prosecutrix, witnesses and counsel may result in a camouflage of the trauma of the victim's experience. The Judge has to be conscious of these factors and rise above any such reservations to ensure that they do not cloud the real facts and the actions which are attributable to the accused persons. The trial courts must be alive to the onerous responsibility which rests on their shoulders and be sensitive in cases involving sexual abuse.
- ***Sakshi Vs. union of India*** (2004) 5 SCC 518 -In-camera trial should be extended to all cases of sexual assault on children to prevent re-victimization during trial.
- ***State of Maharashtra Vs. Dr. Praful B. Desai*** 2003 4 SCC 601 - The Supreme Court has underscored the utility and significance of video conferencing and enumerated the safeguards to be ensured during such trials.
- ***State of Haryana Vs. Premchand*** 1990 (1) SCC 249 - Character and antecedents of victim has no bearing or relevance.

- ***State of Maharashtra Vs. Chandra Prakash Kewal Chand Jain***, AIR 1990 SC 658 - A prosecutrix of a sex-offence cannot be put on par with an accomplice and is a victim of the crime. Her evidence must receive the same weight as is attached to an injured in cases of physical violence.
- ***State of Himachal Pradesh Vs. Mohan Misra***, 1995 CrLJ 3845 - Non examination of victim is no ground for acquittal.
- ***M C Mehta Vs. State of Tamil Nadu and Ors*** AIR 1997 SCC 699 - Child Labour Rehabilitation - Welfare Fund.
- ***State of Rajasthan Vs. Gautam s/o Mohanlal*** (Order dates October 11, 2023) - Rehabilitation of children. Facility for counselling by a trained child counsellor or child psychologist for traumatized children.
- In ***Hori Lal Vs. Commissioner of Police, Delhi & Ors Respondents*** 2002 SCC Online SC37; **Supreme Court issued Guidelines** for search of Missing Children.
- In ***Laxmi Kant Pandey Vs. Union of India*** (1984) 2 SCC 244, **Guidelines for Inter Country adoptions** was laid down to check trafficking through adoption rackets.
- In ***State of Punjab Vs. Gurmit Singh*** (1996) 2 SCC 384 - It was laid down that Examination of the victim should be in camera and anonymity of the victim should be maintained. No questions should be asked on a victim's character.
- In ***Gaurav Jain Vs. Union of India***, (1997) 8 SCC 114 Coordination Committee at the Central Government Level was formed to Frame the National Plan of Action for rehabilitation of trafficked women and children.
- In ***MC Mehta Vs State of Tamil Nadu*** (1996) 6 SCC 75 Supreme Court provided for Rehabilitation of Bonded labour/child labour.

No. 25016/17/2007-Legal Cell
Government of India
Ministry of Home Affairs,
IS Division-II:Legal Cell

New Delhi, dated the 11th Feb, 2009

To

The Home Secretaries of all States/UTs,
The DGPs and IGP's of all States/UTs.

Sub : Comprehensive guidelines regarding service of summons/notices/
Judicial process on the persons residing abroad.

Sir,

Section 105 of Criminal Procedure Code (Cr.P.C.) provides for reciprocal arrangements to be made by Central Government with the foreign governments with regard to the service of summons / warrants/ judicial processes. MHA has entered into Mutual Legal Assistance Treaty/ Arrangements with 25 countries. In respect of other countries, the Ministry attempts to serve the judicial papers by giving an assurance of reciprocity. However, despite this Ministry's best efforts the summons and other judicial process get delayed for various reasons.

With a view to streamlining the procedure, MHA has examined the matter and comprehensive guidelines are enclosed covering various aspects of service of the summons/ Notices/ Judicial process on persons residing abroad.

You are requested to kindly have these comprehensive guidelines circulated amongst all courts/ all investigating officers under your jurisdiction for strict compliance.

Yours faithfully,

Sd/-
(Amar Chand)
Under Secy. To the Govt. of India

Encl : As above.

Copy to :

- i) M/o Law and Justice , Deptt. Of Legal Affairs, Shastri Bhawan, New Delhi
- ii) M/o External Affairs, CPV Division, Patiala House Annexe, Tilak Marg, New Delhi.
- iii) JS(PP), MHA, Lok Nayak Bhawan, Khan Market, New Delhi
- iv) JD(Policy), CBI, North Block, New Delhi
- v) Joint Director, IB, New Delhi.

No. 25016/17/2007-Legal Cell
Government of India
Ministry of Home Affairs

Subject: Comprehensive guidelines referred to in Letter No. 25016/17/2007-Legal Cell, dated _____ of Internal security Division, Ministry of Home Affairs regarding service of summons/notices/judicial process on persons residing abroad.

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Section 105 of Criminal Procedure Code (CrPC) speaks of reciprocal arrangements to be made by Central Government with the Foreign Governments with regard to the service of summons/warrants/judicial processes. The Ministry of Home Affairs has entered into Mutual Legal Assistance Treaty/Agreements with 22 countries which provide for serving of documents. These countries are Switzerland, Turkey, United Kingdom, Canada, Kazakhstan, United Arab Emirates, Russia, Uzbekistan, Tajikistan, Ukraine, Mongolia, Thailand, France, Bahrain, South Korea, United States of America, Singapore, South Africa, Mauritius, Belarus, Spain and Kuwait. In other cases the ministry makes a request on the basis of assurance of reciprocity to the concerned foreign government through the mission / Embassy. The difference between the two categories of the countries is that the country having MLAT has obligation to consider serving the documents whereas the non-MLAT countries does not have any obligation to consider such a request.

Summons/notices/judicial processes issued by the Indian Courts.

2. The summons/warrants/judicial processes received by MHA are forwarded to the concerned Indian Missions/Embassies which in turn, takes up the matter with the designated authority in that country. In case of MLAT countries, the manner of communication is as laid down in MLAT and can be either directly between MHA and the Central Authority or can be through the diplomatic channel. The designated authority after considering the request directs its agency to serve the document on the concerned person and the report of the service, if any is also received through the same chain. This is broadly the system in majority of the countries. However, in some countries private companies/NGOs have also been entrusted with the service of judicial papers.

3. Based on the experience gained, some guidelines are given below which may be followed while making a request to MHA for service of judicial processes. It may, however, be noted that it is the discretion of the requested country to serve the documents and any time frame for a positive response cannot be predicted.

- a) All requests for service of summons/notices/judicial processes on persons residing abroad shall be addressed to the Under Secretary(Legal), IS-II Division, Ministry of Home Affairs, 9th Floor, Lok Nayak Bhawan, New Delhi- 110003. All requests shall be forwarded through post only with a covering letter from the Registrar/Court official giving the following information:
 - a) Material facts of the criminal matter including purpose of the request and the nature of the assistance sought.
 - b) The offences alleged to have been committed, a copy of the applicable laws and maximum penalties for these offence.

- c) Name, designation, telephone and fax number of the person/officer who will be able to give any clarification, if required.
 - d) The complete address of the issuing authority to which the judicial papers/service reports may be returned.
 - e) Approval of the competent authority to bear any expenditure, which they be charged by the foreign government/agency for the service of the documents.
 - f) Degree of confidentiality required and the reasons therefore(in case of confidentiality requirement).
 - g) Any time limit within which the request should be executed. This will be subject to allowance of sufficient margin of time by the requesting agency, as indicated in para 3(iv) of the guidelines
- b) MHA, on receipt of request, will examine it in view of the provisions of treaty, if exists, with the requested country and as per the provision of CrPC in case of non-treaty country.
 - c) India has a MLAT with Singapore and the Govt. of Singapore has prescribed a proforma which shall be completely filled and sent alongwith the request for service of judicial documents. The said proforma is at Annexure – 1 to these guidelines.
 - d) MHA requires at least a period of 12 weeks times for service of such notices in the concerned countries. It is, therefore imperative that a date of hearing/appearance may be decided accordingly.
 - e) In the case of non English speaking countries, the notices should be accompanied with the certified/authenticated translation(in duplicate) in the official language of the country where the notice is proposed to be served.
 - f) Name and address of the individual/organization should be complete in all respect and PO BOX no. and Passport no. will not suffice as address of the individual.
 - g) Ministry of Home Affairs responsibility to service the summons is only in Criminal Matters. Hence, summons in Criminal matters only may be sent to the Ministry for service abroad.
 - h) MHA does not undertake service of the non-bailable warrants of arrest. The service of non-bailable arrest warrents amounts to the extradition of the individual. The request for extradition are based on certain legal procedures contained in applicable treaties negotiated on the basis of the International Principle of Extradition. Such requests are to be forwarded to the Ministry of External Affairs, CPV Division, Patiala House Annexe, Tilak Marg, New Delhi – 110001.

(A) SUMMONS ISSUED BY THE FOREIGN COURTS/AUTHORITIES:-

- 4. The summons issued by the Foreign Courts/Authorities and received in MHA will be served by the State Police through CBI-Interpol. However, Indian Mission/MEA while forwarded such requests to MHA will ensure that:-
 - a) The summon is followed with a translated copy in the Indian language.
 - b) A reasonable time say 10 weeks is allowed after the summons are received in the Ministry of Home Affairs.
 - c) An Assurance of Reciprocity(AOR) is followed from the countries which insist for the same in respect of Indian Summons.

Annexure-1

[Form for requests from prescribed foreign countries to Singapore for Assistance]
TO: The Central Authority in the Republic of Singapore
FROM: The Central Authority in India -Ministry of Home Affairs

REQUESTS FOR MUTUAL LEGAL ASSISTANCE IN A CRIMINAL MATTER

Certificate on behalf of

The Central Authority in India- Ministry of Home Affairs

I, [name, appointment /position of person certifying] on behalf of the Central Authority in India, Ministry of Home Affairs, who is responsible for [state area of responsibility e.g. criminal prosecutions, investigations] in the [requesting party] and who is also authorized to make requests for mutual legal assistance in criminal matters (in the Ministry of Home Affairs – India) certify that the Ministry of Home Affairs- India respectfully requests the assistance of the Government of the Republic of Singapore in a [Criminal matters].

REQUEST

This request is made pursuant to the Agreement between the Govt. of Republic of Singapore and the Govt. of India agreed on 29th June 2005 (hereinafter “ The Agreement”) concerning Mutual Legal Assistance in Criminal matters.

NATURE OF REQUEST

This request relates to the [describe subject of criminal matter e.g. service of summons/Notices/judicial processes issued by the Hon’ble Court _____ In Case number_____ u/s _____]. The authority having the conduct of the criminal matter is [describe authority concerned with the criminal matter]

CRIMINAL OFFENCES / APPLICABLE LEGISLATION/PENALTIES

[Set out the offences alleged to have been contravened in relation to the criminal matter as well as maximum penalties for these offences and attached copies of applicable legislative provisions. State identity of suspect/ accused person if known) e.g.

Offence u/s _____ of the Indian Penal Code/ Cr.PC (define the section)

Section _____ “ _____ ”
“Quote”

¹State whether it is an investigation, prosecution or an ancillary criminal matter. Criminal matter is defined in section 2 of Singapore Mutual Assistance in Criminal Matters Act (Cap 1904). An electronic version of this is available at <http://statutes.leg.gov.sg/>

STATEMENT OF FACTS

[DEscribe the material facts of the criminal matter including in particular, those necessary to establish circumstances connected to evidence sought in the Requesting Party and the relevance of Singapore evidence to the criminal matter in the Requesting Party. Such other information as is required where the requests relates to particular heads of assistance (e.g. location of persons, enforcement of confiscation order) should also be stated) e.g.

PURPOSE OF REQUEST

By this request it is intended to [state purpose which is intended to be achieved by the assistance sought to secure admissible evidence to be used in the trial of ____] e.g. serve a summon issued by the Hon'ble Court _____ in case no. _____ u/s _____ of the Indian Penal Code/ Cr.PC and to secure the presence of the accused before the said court on _____ (date and time)

MANDATORY ASSURANCE & UNDER TAKINGS

It is confirmed that this request:

- (a) does to the prosecution or punishments of a person for a criminal offence that is , or is by reason of the circumstances in which it alleged to have been committed or was committed, an offence of a political character.
- (b) is not made for the purpose of the prosecuting punishment or otherwise causing prejudice to the person on account of that persons race, religion, nationality or political opinions.
- (c) does not relates to the prosecution of a person for an offence in a case where the person has been convicted, acquitted or pardoned by a competent court or by other authority [Requesting party] i.e. of the Governement of India in respect of that offence or of another offence consitituted by the same act or omission as that offence.

The Central Authority in [Requesting Party] i.e. India – Ministry of Home Affairs further undertakes that:

- (a) that any of the evidence / thing obtained pursuant to this request will only be used for the purpose of the request in connection with [State particulars of criminal matters]; and e.g. Case No. _____ u/s _____ of the Indian Penal Code /CrPC; and
- (b) that should the Hon'ble Attorney General of the Republic of Singapore required the return of any evidence / thing obtained pursuant to this request, at the conclusion of [state particulars of criminal matters] for e.g. case no. _____ and of all consequential appeals, the evidence/ thing will be returned to the Honorable Attorney General of the Republic of Singapore.

ASSISTANCE REQUESTED

The Government of Republic of Singapore is requested to take such steps as are necessary to give effect to the following:

[describe particular type of assistance required] e.g.

To serve the summons issued by the Hon'ble Court of _____ in Case No. _____ u/s _____ of the Indian Penal Code/ Cr.PC on the accused Mr. _____ r/o _____.

EXECUTION OF REQUEST

Confidentiality

[State confidentiality requirements of the Requesting Party, if any] e.g.

There is no requirement of confidentiality in this matter.

Procedure to be followed

It is requested that the following procedures be observed in the execution of the request

- [State details of manner and form² in which evidence is to be taken and transmitted to the requesting party, if relevant]
- [State any special requirements as to certification/ authentication of documents]
- [State if attendance by representative of the requesting party at examination of witnesses/ execution of request is required and, if so, the title of the post held by the proposed representative.

e.g.

The summon along with the copy of the complaint filed in the court may be served upon _____ and his signature on the duplicate copy of the summon may be taken as token of acknowledgment and forwarded to the Ministry of Home Affairs, Government of India, through diplomatic channel.

Period of Execution

It is requested that the request be executed within [State period giving reasons i.e. specify likely trial or hearing dates or any other dates/ reasons relevant to execution of requests] E.g. at least 10 days before i.e. (date) _____, which is the next date of hearing in the Court of _____

Signed by : _____
Name /Designation : _____
Office : _____
Date : _____

²please provide proforma or form of words as appropriate

SAMPLE NOTICE TO PERSON SERVED UNDER ARTICLE 14

TO

[State name and address of person to be served] e.g.
Mr. R Ravindran
93, Loyang View
Singapore 507188

The Central Authority in India – Ministry of Home Affairs [Requesting State] has made a request pursuant to the Agreement between the Government of Republic of Singapore (Requested State) and the Government of India (Requesting State) concerning Mutual Legal Assistance in Criminal Matters for the service of the attached process:

[describe process and documents, if any to be served] e.g.

Viz: to serve summons issued by the Ld. Additional Chief Metropolitan Magistrate, 47th Court, Esplanade, Mumbai in CC No.4700982/SS/2007 u/s 500 of the Indian Penal Code.

Please note that by serving the process on behalf of the Central Authority in India – Ministry of Home Affairs [Requesting State], the Government of Republic of Singapore [Requested State] takes no position with respect to the merits of any proceedings in the Additional Chief Metropolitan Magistrate, 47th Court, Esplanade, Mumbai in CC No. 4700982/SS/2007 u/s 500 of the Indian Penal Code in the [Requesting State].

Please review the attached process carefully for instruction and deadlines. If you have any questions about them you may wish to consult a lawyer. You may also contact [[the representative of the Requesting State] directly at [Phone number or other contact details] e.g. Mr. Jayant L Phoujdar, Advocate, Mumbai High Court directly at 022-66377902, 79037904.

However, if the process is a process other than a summons to appear as a witness under the law of the India [Requesting State], please note that [to be advised by the Requesting State of other possible consequences, if any under its law if the person refuses or fails to accept service or fails to comply with the terms of service of process]. E.g. warrant of arrest will be issued by the Additional Chief Metropolitan Magistrate, 47th Court, Esplanade, Mumbai, if the person refuses or fails to accept service or fails to comply with the terms of service of process.

(_____)

Central Authority of India – Ministry of Home Affairs.

Date: