

[AS INTRODUCED IN THE SENATE]

A

Bill

to provide for a witness protection, security and benefit program

Whereas it is expedient to provide for protection of witnesses and devise robust protection, security and benefit program and for matters ancillary thereto;

It is hereby enacted as follows:-

1. Short title, extent and commencement. – (1) This Act may be called the Witness Protection, Security and Benefit Act, 2016.

(2) It extends to the Islamabad Capital Territory.

(3) It shall come into force at once.

2. Definitions.- In this Act, unless there is anything repugnant in the subject or context,–

(a) "Board" means the Witness Protection Board constituted under section 5;

(b) "criminal proceedings" includes any criminal trial or inquiry before a court or tribunal having criminal jurisdiction, an inquest or inquiry into death and a police investigation under the Code of Criminal Procedure, 1898, and any investigation by any other authority under any law;

(c) "Government" means the Federal Government;

(d) "law enforcement agency" includes a body or agency responsible for the enforcement of laws relating to the prevention, detection and investigation of any offence;

(e) "prescribed" means prescribed by rules;

(f) "Programme" means the Witness Protection Programme established under this Act.

(g) "protected person" means any person who has been placed under protection for the purposes of this Act;

(h) "related person" means any member of the family or household of the witness, or any other person in a close relationship to, or association with, such witness.

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- (i) "rules" means the rules made under this Act;
- (j) "Schedule" means the Schedule to this Act;
- (k) "serious offence" means an offence as specified in the Schedule;
- (l) "Unit" means the Witness Protection Unit established under this Act;
- (m) "witness" means a person who –
- (n) has made a statement, or has given or agreed or may be required to give evidence in relation to the commission or possible commission of a serious offence;
- (o) because of his or her relationship to or association with a person referred to in clause (i), may require protection or other assistance under this Act; or
- (p) a person in possession of, or provided any important information, statement or assistance to a public officer and has agreed to share the information with law enforcement agency and has agreed to give evidence on behalf of the State;
- (q) for any other reason, may require protection or other assistance under this Act;

3. Application of the Act and over-riding effect.- (1) The provisions of this Act shall be applicable to the investigation inquiry and trial of serious offences.

(2) In case of any inconsistency, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any provision of the Code of Criminal Procedure, 1898, or in any provision of any other law for the time being in force.

4. Witness Protection Programme.- (1) As soon as after the commencement of this Act, Government shall establish a Witness Protection Programme for protection and safety of a witness or any other related in respect of scheduled offences.

- (2) The actions in the Programme may include the following:-
 - (a) making arrangements necessary –

- (i) to allow the witness to establish a new identity;

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- (ii) to allow the witness to conceal his or her identity by wearing a mask, changing his or her voice, appearance or any other form of segregation during the investigation or trial, or examination under the law;
 - (iii) to allow video conferencing in order to secure the protected person; provided that such arrangements are approved by the concerned authority under this Act;
 - (iv) to protect the witness otherwise; or
- (b) relocating the witness;
 - (c) providing accommodation for the witness;
 - (d) providing reasonable financial assistance to the witness, whenever practicable, for obtaining a means of livelihood;
 - (e) providing compensation to the legal heirs, if the protected person is killed due to his participation in the Programme, in case of death or permanent in capacity of the protected person during his protection, providing free education to his or her dependent minors;
 - (f) making special arrangements for security of witness for reasonable period of time.

5. Establishment of Witness Protection Advisory Board.- (1) Government shall establish a Board to be known as the Witness Protection Advisory Board, which shall consist of –

- (i) the Secretary, Ministry of Interior who shall be its Chairman;
- (ii) the Secretary, Ministry of Law and Justice;
- (iii) the Secretary, Ministry of Finance,;
- (iv) the Attorney General of Pakistan;
- (v) the Inspector General of Police, Islamabad Capital Territory.

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(2) The Board shall advise the Unit generally on the exercise of its powers and performance of its functions under this Act and shall, in particular and without prejudice to the generality of the foregoing shall –

- (a) advise on the formulation of witness protection policies in accordance with the current law and international best practices;
- (b) oversight the administration of the Unit;
- (c) approve the budgetary estimates of the Unit; and
- (d) exercise such other powers and perform such other functions as may be conferred by or under this Act or assigned to it by the Government.

6. Witness Protection Unit.- (1) A Unit to be called as the Witness Protection Unit, to facilitate and implement the Programme shall be established in the Ministry of Interior.

- (2) Government may, by notification in the official Gazette –
- (a) establish a branch office of the Unit in any defined area for the purposes of the administration of this Act; or
 - (b) abolish any branch office or incorporate it with any other such office, and may for this purpose make any administrative or other arrangements as deemed necessary;

7. Functions of the Unit.- The functions of the Unit shall be to -

- (a) establish and maintain the Programme;
- (b) determine the criteria for admission to and removal from the Programme;
- (c) determine the type of protection measures to be applied;
- (d) advise any Government department, agency, body or any other person on the adoption of strategies and measures on witness protection; and

- (e) perform such other functions as may be necessary for carrying out the purposes of this Act, or any other functions as may be assigned to it by Government

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8. Memorandum of Agreement with the Person to be Protected. — Before a person is provided protection under this Act, he shall first execute a memorandum of agreement which shall set forth his responsibilities including:

- (a) to testify before and provide information to all appropriate law enforcement officials concerning all appropriate proceedings in connection with or arising from the activities involved in the offense charged;
- (b) to avoid the commission of the crime;
- (c) to take all necessary precautions to avoid detection by others of the facts concerning the protection provided him under this Act;
- (d) to comply with legal obligations and civil judgments against him;
- (e) to cooperate with respect to all reasonable requests of officers and employees of the Government who are providing protection under this Act; and
- (f) to regularly inform the appropriate program official of his current activities and address.

9. Breach of the Memorandum of Agreement. — Substantial breach of the memorandum of agreement shall be a ground for the termination of the protection provided under this Act:

Provided that before terminating such protection, the Unit shall send notice to the person involved of the termination of the protection provided under this Act, stating therein the reason for such termination.

10. Confidentiality of Proceedings. — All proceedings involving application for admission into the Program and the action taken thereon shall be confidential in nature. No information or documents given or submitted in support thereof shall be released except upon written order of the Department or the proper court.

11. Annual Report. (1) The Government shall prepare an annual report relating to the general operation, performance and effectiveness of the Programme which shall be laid before the Parliament.

(2) The Witness Protection Board or Unit, as the case may be, whenever considers it necessary to do so, present special report to Government on any matter relating to the Programme which shall be laid before the parliament.

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12. Rules. The Government may make rules for carrying out the purposes of this Act.

SCHEDULE (Schedule 2(k))

(Offences in respect of which a witness or related person may be placed under protection)

1. Treason
2. Sedition
3. Murder
4. Rape
5. Public violence
6. Robbery-
 - (a) when there are aggravating circumstances; or
 - (b) involving the taking of a motor vehicle.
7. Kidnapping
8. Perjury
9. Indecent assault on a child under the age of 16 years, involving the infliction of grievous bodily harm.
10. Any offence related to contraband drugs and drugs trafficking if -
 - (a) the value of the substance and question is more than rupees one million; or
 - (b) the offence was committed by any law enforcement officer.
11. Any offence referred to in Anti-Terrorism Act.
12. Any offence relating to -
 - (a) the dealing in or smuggling of ammunition, firearms, explosives or armament; or

- (b) the possession of an automatic or semi-automatic firearm, explosives or armament.

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13. Any offence relating to exchange control, corruption, extortion, fraud, forgery, uttering or theft.-

- (a) involving amounts of more than rupees five million; or
- (b) involving amounts of more than rupees one million if it is alleged that the offence was committed by a person, group of persons, syndicate or any enterprise acting in the execution or furtherance of a common purpose or conspiracy; or
- (c) if it is alleged that the offence was committed by any law enforcement officer -
 - (i) involving amounts of more than rupees one million; or
 - (ii) as a member of a group of persons, syndicate or any enterprise acting in the execution or furtherance of a common purpose or conspiracy.

14. Any offence referred to in any law relating to offences of sabotage against the State.

15. Any conspiracy, incitement or attempt to commit any offence referred to in this Schedule,

16. Any other offence as may be prescribed.

17. Any other offence in respect of which it is alleged that the offence was committed by -

- (a) a person, group of persons, syndicate or any enterprise acting in the execution or furtherance of a common purpose or conspiracy; or
- (b) a law enforcement officer, and in respect of which the Chief Witness Protection Officer is of the opinion that the safety of a witness who is or may be required to give evidence, or who has given evidence in respect of such an offence in any proceedings or any related person, warrants protection.

STATEMENT OF OBJECTS AND REASONS

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 cooperating. Similarly, inadequate protection to the judges, prosecutors, etc. dealing with the anti terrorism cases has been identified as one of the major causes impeding the disposal of cases. The draft Bill will ensure that the government shall formulate and implement a comprehensive program for the protection of Judges, Members, Councils, Public Prosecutors, witnesses and every other person associated with the investigation or trial of the case.

The abovementioned Bill is designed to seek the said objectives.

1. **SENATOR RAJA MUHAMMAD ZAFAR-UL-HAQ,**
2. **SENATOR AITZAZ AHSAN,**
3. **SENATOR COL. (R) SYED TAHIR HUSSAIN MASHHADI,**
4. **SENATOR HASIL KHAN BIZENJO,**
5. **SENATOR SAEED GHANI,**
6. **SENATOR MUHAMMAD TALHA MEHMOOD,**
7. **SENATOR MUSHAHID HUSSAIN SYED,**
8. **SENATOR IQBAL ZAFAR JHAGRA,**
9. **SENATOR MUHAMMAD USMAN KHAN KAKAR,**
10. **SENATOR DR. JEHANZEB JAMALDINI,**
11. **SENATOR BAZ MUHAMMAD KHAN,**
12. **SENATOR HIDAYAT ULLAH,**
13. **SENATOR NAUMAN WAZIR KHATTAK,**
14. **SENATOR SIRAJUL HAQ AND**
15. **SENATOR SYED MUZAFAR HUSSAIN SHAH**
MEMBERS-IN-CHARGE