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THE PUNJAB WITNESS PROTECTION ACT 2018

(XXI of 2018)

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TEXT

THE PUNJAB WITNESS PROTECTION ACT 2018
(XXI of 2018)

[24th May, 2018]

An
Act

to protect witnesses and other persons connected with certain criminal proceedings.

It is necessary to provide for measures to protect witnesses or other persons connected with the investigation, prosecution and trial of certain criminal proceedings relating the offence of terrorism, sexual offence or any other serious offence; and, to provide for ancillary matters.

Be it enacted by Provincial Assembly of the Punjab as follows:–

1. Short title, extent and commencement.– (1) This Act may be cited as the Punjab Witness Protection Act 2018.

- (2) It shall extend to whole of the Punjab.
- (3) It shall come into force at once.

2. Definitions.– In this Act:

- (a) “Act” means the Punjab Witness Protection Act 2018;
- (b) “Board” means the Witness Protection Board constituted under the Act;
- (c) “close protection service” means the provision of bodyguards for purposes of protection from assault, assassination or kidnapping;
- (d) “court” means the court seized of a case to which the Act applies;
- (e) “criminal proceedings” means an investigation, inquiry or trial under the Code of Criminal Procedure, 1898 (*V of 1898*) relating to an offence of terrorism or any other serious offence;
- (f) “Government” means Government of the Punjab;
- (g) “high risk accused” means a person under investigation, charged with, or tried for, the commission of an offence of terrorism or a serious offence and is considered to be a high risk for the persons connected with the criminal proceedings;
- (h) “law enforcement agency” includes a body or agency responsible for the enforcement of law relating to the prevention, detection and investigation of an offence;
- (i) “offence of terrorism” means an act defined as such in section 6 of the Anti-Terrorism Act, 1997 (*XXVII of 1997*) and includes such other offence under that Act as the Government may, by notification in the official Gazette, determine;

¹This Act was passed by Provincial Assembly of the Punjab on 16 May 2018; assented to by the Governor of the Punjab on 21 May 2018; and, was published in the Punjab Gazette (Extraordinary), dated: 24 May 2018, pp.8133-8138.

- (j) “prescribed” means prescribed by the rules made under the Act;
- (k) “Programme” means the Witness Protection Programme established under the Act.
- (l) “protected person” means any person who is extended protection under section 5 of the Act;
- (m) “protection” means the protection of a protected person and includes relocation or change of identity of, or provision of assistance or services to, him under the Act;
- (n) “rules” means the rules made under this Act.
- (o) “serious criminal case” means a criminal case pertaining to a serious offence and pending in a court;
- (p) “serious offence” means an offence punishable with death or imprisonment for life or for a term exceeding seven years and includes a sexual offence but does not include an offence of terrorism;
- (q) “sexual offence” means an offence under sections 366-A, 367-A, 376 or 377 of the Pakistan Penal Code, 1860 (*XLV of 1860*) or under the Punjab Suppression of Prostitution Ordinance, 1961 (*II of 1961*);
- (r) “terrorism case” means a criminal case pending in a court pertaining to an offence of terrorism;
- (s) “Unit” means the Witness Protection Unit established under the Act; and
- (t) “witness” means a person who may testify under Article 3 of the Qanun-e-Shahadat Order, 1984 (*P.O. No. X of 1984*) and includes such other person as is specified in the Act.

3. Witness Protection Board.– (1) The Government shall establish the Witness Protection Board, consisting of the following members:

- (a) Additional Chief Secretary or, as the case may be, Secretary to the Government, Home Department;
- (b) Secretary to the Government, Finance Department;
- (c) Secretary to the Government, Public Prosecution Department;
- (d) Prosecutor General, Punjab;
- (e) Additional Inspector General, Counter Terrorism Police Department;
- (f) Additional Inspector General Special Branch; and
- (g) Additional Inspector General Investigations.

(2) The Additional Chief Secretary or, as the case may be, Secretary to the Government, Home Department shall be the Chairperson of the Board.

(3) The Chairperson shall, by notification, appoint a suitable officer as Secretary of the Board.

(4) The Board shall:

- (a) frame policy guidelines for purposes of the Act;
- (b) submit policy guidelines to the Government for approval;
- (c) oversee and monitor the implementation of the policy guidelines under the Act;
- (d) spearhead and supervise the performance of the functions of the Units;
- (e) perform such other functions as may be necessary to achieve the objectives of the Act; and
- (f) implement any other direction of the Government in connection with the Act.

4. Witness Protection Unit.— (1) The Government shall establish the following Witness Protection Units:

- (a) Unit-I relating to the offences of terrorism; and
- (b) Unit-II relating to the serious offences.

(2) The Government, on the recommendations of the Board, shall appoint the head of a Unit and such other members of the Unit as the Government may determine or as may be prescribed.

(3) A Unit, under the general supervision and control of the Board, shall discharge its functions effectively and meaningfully to achieve the objectives of the Act, and shall implement the directions of the Board or, as the case may be, the Government.

5. Protected persons.— (1) Subject to subsection (2), a victim or a witness or any other person connected with criminal proceedings and a person closely related to the aforesaid persons may apply for protection under the Act.

(2) The Government, the Counter Terrorism Department, the Public Prosecutor or the Court trying an offence of terrorism or a serious offence may direct the concerned Unit to assess the risk or continued risk of any person directly or indirectly concerned with the criminal proceedings.

(3) The Unit shall consider the following matters while determining the risk of a person:

- (a) the risk profile of the person involved;
- (b) the nature and gravity of the threat to that person; and
- (c) the measures required to eliminate or reduce the risk at the minimum possible cost.

6. Non-court measures for protection.— (1) On the direction of the Government or of its own motion, a Unit may, in consultation with the person to be protected, take one or more of the following measures for the protection of a protected person:

- (a) provision of close protection service;
- (b) lodging in a safe house;

- (c) temporary or permanent relocation at a safe place;
- (d) change of identity;
- (e) concealment of identity of the persons involved in the criminal proceedings; and
- (f) providing financial assistance to a protected person who is unable to undertake regular employment or when his freedom of movement is severely curtailed as a result of protection to him.

(2) The Unit shall determine the time for which a non-court protection measure shall remain in force but if the Unit is satisfied that the non-court protection measures are no longer required, it may, at any time and after recording the reasons, withdraw the non-court protection measures.

(3) The Government may, after consultation with the Unit, revoke or modify the protection measures taken by the Unit.

(4) The expenses for the measures under subsection (1) shall be borne by the Government.

(5) Every department, agency or office of the Government shall cooperate with and provide such assistance to the Unit as may be necessary for carrying out the measures under subsection (1).

7. Assistance to witnesses.— (1) A witness, other than an accused, is eligible for assistance in connection with his testimony before a court in a terrorism case or a serious criminal case under a direction for special measures, when:

- (a) he is willing to give evidence but is fearful or under stress owing to the nature of the offence or proceedings relating thereto or is intimidated or labours under an intimidation that harm may come to his person or family or property if he gives evidence and the court is satisfied that the quality of evidence is likely to be affected on that account;
- (b) he suffers from a physical disability or mental disorder;
- (c) he is under the age of 16 years at the time of recording of evidence; or
- (d) he is a victim of a sexual offence.

(2) The court, while making an order under this section, shall also consider the following factors:

- (a) the personal circumstances of the witness including his opinion and belief;
- (b) the behaviour of the accused, his family or associates or any other person towards him;
- (c) the nature and circumstances of the offence; and
- (d) the report of the Unit with regard to the gravity of the threat to the witness.

8. Special measures.— (1) The Unit or, as the case may be, the court shall take special measures mentioned in section 9 to section 14 of the Act.

(2) If the court is satisfied, on an application by a party to the proceedings or on its own motion, that a witness needs assistance under section 7 of the Act, it may, by order, direct to take such special measures as are mentioned in the order, but before making an order, the court shall afford an opportunity of hearing to the person likely to be affected by the order.

(3) The special measures shall, unless otherwise directed, have effect from the day the order is made and until the proceedings are concluded or for such period as the court may direct.

(4) The special measures may be discharged or varied at any time, in the interest of justice, by the court either on the application of the party on whose request it was made, or on its own motion after affording an opportunity of hearing to the parties concerned.

9. Screening a witness.— The court may direct that a special measure be taken to prevent the witness from being seen while coming to the court to give evidence or while entering the court or while recording the evidence or while leaving the court in a manner that he continues to see or be seen by the court, the public prosecutor, the legal representatives acting in the proceedings or any other person appointed by the court for the purpose.

10. Video link.— (1) When so directed by the court, the Unit shall take special measures so that the court may examine a witness through video link at a location outside the court.

(2) Where it is not possible to have a video link in the court room, the court may move to the place, as determined by the Government in consultation with the High Court, where such facility is available.

Explanation.— For purposes of this section, the video-link means a live television link or other arrangements whereby a witness, while away from the court room or other place where the proceedings are being held is:

- (a) able to see and hear a person there and to be seen and heard by the persons specified in section 9; and
- (b) able to be seen and heard by the accused and the public unless the court directs otherwise.

11. Restricted entry to the court room.— On an application by the Unit or the public prosecutor, the court may pass an appropriate order in terms of the proviso to section 352 of the Code of Criminal Procedure, 1898 (*V of 1898*) or, direct that the public generally, or any particular person, shall not have access to, or be or remain in, the room of building used by the court.

12. Rules of cross-examination.— (1) An accused charged with an offence of terrorism or a sexual offence shall not, without an express permission by the court, himself cross-examine a witness but his counsel may cross-examine the witness.

(2) The permission under subsection (1) shall not be granted when, in the opinion of the court, the cross-examination by the accused in person is likely to affect the voluntariness or quality of the evidence.

(3) The court shall forbid a question to the victim of a sexual offence relating to any sexual behavior of the victim on any previous occasion with the accused or any other person, unless such a question, in the opinion of the court, is a relevant fact in the case.

13. Reporting criminal proceedings.— (1) The reporting of the identity of a person connected with an offence of terrorism or a sexual offence or the identity of the members of his family shall be prohibited in print, electronic or other media, if the person involved in the offence is under the age of eighteen years.

(2) The reporting of the identity of a person connected with an offence of terrorism or a sexual offence or the identity of the members of his family shall be prohibited in print, electronic or other media, if the court is satisfied that the quality or voluntariness of the evidence of the person concerned will be diminished thereby.

14. Anonymity of persons involved in proceedings.— (1) In any proceedings to which this Act applies, where a person is or is likely to be required as a witness, the court on the application of any party or of its own motion, make an order for the preservation of the anonymity of the witness or of any person who might be identified in the evidence of the witness, and to ensure that his identity is not disclosed in, or in connection with, the proceedings.

(2) Unless otherwise stated, such an order shall be taken to include directions:

- (a) that the name, address, and identifying details shall be withheld;
- (b) that the witness may use a pseudonym;
- (c) that no question is asked at the trial that might lead to the identification of the witness or his address or any information from which his identity or address might reasonably be identified, without the express permission of the court;
- (d) for the deletion or redaction from all documents to be disclosed or produced in the proceedings of the witness's identity and address, and any information which might reasonably lead to the identification of the witness; and
- (e) that no person shall publish or communicate to any other person the identity, address, or other identifying details of the witness, or any other information from which his identity or address might reasonably be identified, where it is known that, or in such a way as it may be concluded that he is or was a witness in the case, save where it is necessary for the proper lawful conduct of the proceedings.

(3) The court shall not make an order under this section unless it is satisfied:

- (a) that an order is necessary:

- (i) to ensure the safety of the witness or any other person, or to prevent any serious damage to property; or
 - (ii) to prevent real and significant harm to the public interest;
- (b) that the effect of the order, in no circumstances, would prevent the accused from receiving a fair trial; and
- (c) that the importance of the testimony of the witness is such that in the interest of justice the witness ought to testify, and either:
 - (i) there is a genuine risk that witness would not testify if the order were not made; or
 - (ii) there would be a genuine risk of real and significant harm to the public interest if the witness were to testify without such an order being made.

(4) While considering whether the conditions in sub-section (3) have been met, the court shall take into consideration all of the relevant circumstances, and in particular:

- (a) the general right of the accused to know the identity of the witness;
- (b) the extent to which the credibility of the witness is likely to be an issue in the proceedings;
- (c) whether the evidence could be properly tested without the witness's identity being disclosed; and
- (d) whether the witness has a tendency or any motive to be dishonest.

(5) An order made under this section shall be known as a 'Witness Anonymity Order' and shall remain in force during the period specified in the order unless the order is sooner revoked or any other order is made.

(6) The violation of a Witness Anonymity Order or any provision thereof shall be an offence.

15. Trial in jail.— Where the Government, in consultation with the court, is satisfied that a trial cannot be safely held in a court room, it may, by order, direct that the trial shall be held in such jail as may be specified in the order.

16. Punishment.— A person, who contravenes the provisions of section 13 or section 14 of the Act, shall be punishable with imprisonment for a term which may extend to three years but which shall not be less than thirty days and with fine which may extend to rupees five million but which shall not be less than rupees one hundred thousand.

17. Rules.— The Government may, by notification in the official Gazette, make rules to carry out the purposes of this Act.