

Bill No. XLIX of 2023

THE WITNESS PROTECTION BILL, 2023

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CLAUSES

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THE WITNESS PROTECTION BILL, 2023

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BILL

to provide adequate protection and assistance to witnesses in criminal cases and to establish a procedure and mechanism to provide such protection and for matters connected therewith and incidental thereto.

BE it enacted by Parliament in the Seventy-fourth Year of the Republic of India as follows:—

1. (1) This Act may be called the Witness Protection Act, 2023.

Short title and commencement.

5 (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette appoint.

2. In this Act, unless the context otherwise requires —

Definitions.

(a) "appropriate Government" means in case of a State, the Government of that State and in the case of Union Territories, the Union Territory Administration or the Central Government, as the case may be;

10 (b) "Competent Authority" means the Witness Protection Authority constituted under section 3;

(c) "concealing of identity of the 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;

(d) "court" means the court having the jurisdiction for trying the offence where the witness is to tender evidence; 5

(e) "family member" includes parents or guardian, spouse, live-in partner, children, grandchildren of the witness;

(f) "in camera proceedings" means proceedings wherein the Competent Authority or Court allows only those persons who are necessarily to be present while hearing and deciding the witness protection application or deposing in the court; 10

(g) "Live Link" means and includes a live video link or other such arrangement which enables a witness, while not being physically present in the courtroom, for deposing in the matter or interacting with the Competent Authority;

(h) "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; 15

(i) "prescribed" means prescribed by the rules or regulations made under this Act;

(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; containing therein 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; 20 25

(k) "witness" means any person, who possesses information or document about any offence;

(l) "Witness Protection Cell" means a dedicated Cell of State or Union Territory or Central Police Agencies established under section 5 of the Act, assigned with the duty to implement the witness protection order; 30

(m) "Witness Protection Fund" means the fund established under section 6 of the Act, for bearing the expenses incurred during the implementation of Witness Protection Order passed by the Competent Authority under this Act;

(n) "witness protection measures" means measures mentioned in section 10 of the Act; 35

(o) "Witness Protection Order" means an order passed by the Competent Authority detailing the witness protection measures to be taken.

Witness
Protection
Authority.

3. (1) The appropriate Government shall, by an order, constitute a Standing Committee to be known as Witness Protection Authority (hereinafter to be referred to as the Competent Authority), in every district there under, for implementing the provisions of this Act. 40

(2) The Competent Authority, shall comprise of the following, namely:—

(a) a District or Sessions Judge having jurisdiction in the district as the Chairperson *ex-officio*;

(b) the Head of the Police in the district as a Member *ex-officio*; and 45

(c) the Head of the Prosecution in the District as the Member Secretary *ex-officio*.

(3) The procedure for the Competent Authority to conduct meetings and proceedings under this Act and passing witness protection orders, the terms and conditions of service of the Chairperson and members of the Competent Authority and other such incidental matters, shall be regulated in such manner as may be prescribed.

5 (4) The Competent Authority shall ensure confidentiality and privacy in all matters relating to the identification and protection of witnesses, and also ensure that sensitive information is securely handled and disclosed only on a need-to-know basis to authorized personnel involved in the witness protection process.

10 **4.** Every Competent Authority shall exercise the following powers in the discharge of its functions, namely:— Powers of the Competent Authority.

(i) pass witness protection orders, including but not limited to relocation, change of identity and provision of necessary security measures, to witnesses who qualify for protection under the Act;

15 (ii) assess and evaluate the eligibility of witnesses for availing witness protection measures, considering factors such as the nature of the case, level of threat faced by the witness and the witness's cooperation in criminal proceedings;

(iii) determine the appropriate level of protection required for witnesses, taking into account the specific circumstances of each case, the assessed level of threat and the available resources;

20 (iv) develop and establish comprehensive protection plans tailored to suit the individual needs and circumstances of each protected witness, ensuring the adequate implementation of security measures and other necessary provisions;

25 (v) collaborate and engage with relevant law enforcement agencies, judicial bodies and other authorities to facilitate the effective implementation of witness protection measures, including coordination in relocation, provision of security personnel and communication between concerned parties;

30 (vi) monitor and enforce compliance with the witness protection orders, ensuring that all parties involved, including protected witnesses, law enforcement agencies and other relevant entities, adhere to the provisions outlined in the Act and comply with the established protection plans;

(vii) request assistance from other jurisdictions, within India for the purpose of providing effective protection to witnesses, including cooperation in relocation, sharing of intelligence and mutual legal assistance; and

35 (viii) periodically review and modify protection arrangements for witnesses, taking into consideration any changes in circumstances, emerging threats, or other relevant factors, in order to ensure ongoing and adequate protection:

Provided that the exercise of the aforementioned powers by the Competent Authority shall be in accordance with the provisions of the Act, any orders or regulations framed thereunder and within the framework of applicable laws and principles of natural justice.

40 **5. (1) The appropriate Government shall constitute a Witness Protection Cell comprising of such number of officers and staff, as may be prescribed.** Witness Protection Cell.

(2) The Witness Protection Cell shall be headed by an officer not below the rank of DIG, Police, who shall be designated as Director, Witness Protection Cell.

(3) It shall be the duty of the Director to—

45 (a) provide strategic direction and leadership to the Cell in the implementation of the provisions of the Act;

(b) develop and execute policies, protocols and procedures for the effective functioning of the Cell and ensure compliance with applicable laws and regulations;

(c) manage and supervise the activities of the Cell, including the assessment of witness eligibility, coordination of protection measures and liaison with relevant stakeholders;

(d) oversee the creation and maintenance of a secure and confidential database for the documentation of protected witnesses, protection plans and associated information; and 5

(e) facilitate training programs and capacity building initiatives for the officers and staff of the Witness Protection Cell and relevant stakeholders to enhance their knowledge and skills in witness protection.

(4) Whenever a vacancy arises in the position of Director, the senior most Officer of the Witness Protection Cell shall discharge the duties of the Director, until a new Director is appointed, as prescribed. 10

Witness
Protection
Fund.

6. (1) The appropriate Government shall establish a Fund, namely, the Witness Protection Fund, from which the expenses incurred for the implementation of the witness protection order passed by the Competent Authority and other expenditure related to implementation of the provisions of the Act, shall be met. 15

(2) The Fund shall comprise of the following, namely—

(a) Budgetary allocation made in the Annual Budget by the appropriate Government;

(b) receipt of amount of costs imposed / ordered to be deposited by the courts/ tribunals in the Witness Protection Fund; 20

(c) donations/ contributions from philanthropists/ charitable Institutions/ Organizations and individuals permitted by the Government;

(d) funds contributed under corporate social responsibility by companies as per section 135 of the Companies Act, 2013. 25 18 of 2013.

(3) The said Fund shall be operated by the Department/Ministry of Home under the appropriate Government, as the case may be and the District Magistrate or any other officer nominated by him shall have the right of disbursing the amount distributed from the level of the appropriate Government to each district thereunder.

Eligibility and
classification
of witnesses.

7. (1) A witness shall be eligible for availing witness protection measures, if the witness has provided or is likely to provide information or evidence in a criminal proceeding or an investigation and is or may be at risk of harm as a result of their cooperation; 30

(2) Depending upon the level of threat perception, the witnesses can be categorised as follows—

(a) Category 'A': Where the threat extends to life of witness or his family members, during investigation/trial or thereafter; 35

(b) Category 'B': Where the threat extends to safety, reputation or property of the witness or his family members, during the investigation/trial or thereafter;

(c) 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. 40

Filing of
Witness
Protection
Application
before the
Competent
Authority.

8. (1) The application for seeking protection order under the Act shall be filed in such manner and form, as may be prescribed before the Competent Authority of the district concerned where the offence is committed, through its Member Secretary along with supporting documents, if any. 45

(2) The application can be submitted to Competent Authority by:—

(a) the witness or his family member;

(b) the officer investigating the concerned crime; or

(c) upon a direction issued by the court having the jurisdiction to try the said offence.

5 **9.** (1) 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 Threat Analysis Report from the Assistant Commissioner of Police or Deputy Superintendent of Police (ACP/DSP) in charge of the concerned Police Sub Division investigating the case. Procedure for processing the application.

10 (2) Depending upon the urgency in the matter owing to imminent threat, the Competent Authority may 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.

15 (3) The Threat Analysis Report shall be prepared expeditiously by the concerned ACP/DSP while maintaining full confidentiality and it shall reach the Competent Authority within five working days of receipt of the order.

(4) 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.

20 (5) 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.

25 (6) All the hearings on Witness Protection Application shall be held in-camera by the Competent Authority while maintaining full confidentiality.

(7) An application shall be disposed of by the Competent Authority within five working days of receipt of Threat Analysis Report from the Police Authorities and a Witness Protection Order may be passed by the after determining the category of witness on the basis of Threat Analysis Report.

30 (8) The Witness Protection Order passed by the Competent Authority shall be implemented by the Witness Protection Cell of the State or the Union Territory, as the case may be:

35 Provided that the Witness Protection Order passed by the Competent Authority for change of identity and/or relocation shall be implemented by the Department/Ministry of Home of the concerned State or Union territory, as the case may be.

(9) The 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 or the Union Territory, as the case may be.

40 (10) The Witness Protection Cell shall file a monthly follow-up report before the Competent Authority in the prescribed format.

45 (11) 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 by any of the persons indicated in sub-section (2) of section 8 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 and on receipt thereof, further order, as deemed appropriate, shall be passed by the Competent Authority based on the Threat Analysis Report.

10. (1) 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. Types of witness protection measures.

(2) The witness protection measures may include the following,—

(a) ensuring that witness and accused do not come face to face during investigation or trial;

(b) monitoring of mail and telephone calls;

(c) making arrangement with the telephone company to change the witness's telephone number or assign him or her an unlisted telephone number; 5

(d) installing security devices in the witness's home such as security doors, CCTV, alarms, fencing etc.;

(e) concealing identity of the witness by referring to him/her with the changed name or alphabet; 10

(f) assigning emergency contact persons for the witness;

(g) providing close protection and regular patrolling around the witness's house;

(h) arranging for a temporary change of residence of the witness to a relative's house or a nearby town;

(i) escorting the witness to and from the court and providing him/her a Government vehicle or a State funded conveyance for the date of hearing; 15

(j) holding of in-camera trials;

(k) allowing a support person to be present with the witness during recording of statement and deposition;

(l) using 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's voice, so that he/she is not identifiable; 20

(m) ensuring expeditious recording of deposition during trial on a day to day without adjournments basis; 25

(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) providing any other form of protection measures, as deemed necessary, after considering the specific requests of the witness. 30

Monitoring
and review of
Witness
Protection
Orders.

11. (1) It shall be the duty of the Director, Witness Protection Cell to monitor the implementation of the Witness Protection Order passed by the Competent Authority and conduct a monthly review thereof and file a monthly follow-up Report before the Competent Authority, in such form and manner as may be prescribed. 35

(2) It shall be the duty of the Competent Authority to:—

(a) review the Witness Protection Orders passed by it on a quarterly basis based on the monthly follow-up report submitted by the Witness Protection Cell; and

(b) periodically assess the necessity of continuing the Witness Protection Order or enhancing or reducing the protection measures on the basis of a monthly or fresh Threat Analysis Report, as the case may be, submitted by the ACP/DSP in charge of the concerned police sub-division: 40

Provided that the Competent Authority may call for the Threat Analysis Report at any time upon receipt of any information regarding threat perception to witnesses from any interested person having *locus standi* in the matter. 45

12. The appropriate Government may issue guidelines or directions to be followed by the officers entrusted with the responsibility of ensuring proper implementation of witness protection measures after issuance of Witness Protection Order by the Competent Authority, in such manner as may be prescribed. Witness protection guidelines.
- 5 **13.** (1) An application for seeking protection of the identity of the witness may be filed, during the course of investigation or trial of any offence, before the Competent Authority through its Member Secretary, in such form and manner as may be prescribed. Protection of identity.
- (2) Upon receipt of the application, the Member Secretary shall call for the Threat Analysis Report, as mentioned in section 9 and the Competent Authority shall examine the witness or his family members or any other person, as it deems fit, to ascertain whether there is any necessity to pass an identity protection order. 10
- (3) During the course of hearing on the application, the identity of the witness shall not be revealed to any other person and the media, which is likely to lead to witness identification. 15
- (4) The Competent Authority, shall based on the material available on record, dispose of the application and/or pass an appropriate order for protection of the identity of the witness. 20
- (5) Once an order for protection of the identity of witness is passed by the Competent Authority, it shall be the responsibility of the Witness Protection Cell to ensure that the identity of such witness or his or her family members including name or parentage or occupation or address or digital footprints are not revealed and are fully protected. 25
- (6) The Witness Protection Cell shall monitor and ensure that all appropriate steps are taken for giving effect to the orders of Competent Authority passed under this section. 30
- (7) As long as the 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. 35
- 14.** (1) In appropriate cases, where there is a request from the witness for change of identity, in the prescribed format and based on the Threat Analysis Report, a decision shall be taken for conferring a new identity to the witness by the Competent Authority. Change of identity.
- (2) Conferring new identities includes assigning new name, profession, parentage and providing supporting documents acceptable by the Government Agencies: 40
- Provided that the new identities should not deprive the witness from existing educational or professional or property rights.
- (3) The Competent Authority may require the applicant to provide any additional information concerning the application that is necessary for its proper consideration. 45
- (4) The Competent Authority may grant permission to acquire and use an assumed identity only if it is satisfied that the assumed identity is needed to protect the safety or welfare of the person in respect of whom the application is made.
- (5) The Competent Authority shall conduct a thorough assessment to determine the need for a change of identity, taking into account factors such as the nature of the threat, the credibility of the threat and the potential risks to the witness's safety.
- (6) Where the Competent Authority passes an order allowing a change of identity, the Witness Protection Cell shall initiate the necessary procedures, which may include providing the witness with a new name, identity documents and supporting documentation to establish their new identity.
- (7) The change of identity shall be legally recognized and respected by all relevant government agencies, institutions and entities and the new identity of the witness shall be treated as valid and shall not be subject to discrimination or prejudice.

(8) A person granted an identity change shall not intentionally, knowingly, or recklessly acquire evidence of, or use, an assumed identity covered, in any way not in accordance with the provisions of this Act, failing which the Competent Authority shall:—

(a) vary or cancel its orders relating to identity change at any time; and

(b) cancel an order relating to identity change if satisfied that the use of the assumed identity is no longer necessary: 5

Provided that the Competent Authority shall give written notice of the variation or cancellation of orders relating to identity change to the person and the authorised person's supervisor.

Relocation of witness.

15. (1) In appropriate cases, where there is a request from the witness for relocation in the prescribed format and based on the Threat Analysis Report, a decision shall be taken for relocation of the witness by the Competent Authority. 10

(2) The Competent Authority may pass an order for witness relocation to a safer place within the State or the Union Territory, as the case may be, or territory of the Indian Union keeping in view the safety, welfare and wellbeing of the witness: 15

Provided that the expenses for such relocation shall be borne from the Witness Protection Fund.

(3) The Witness Protection Cell shall be responsible for giving effect to the orders passed by the Competent Authority under this section or generally otherwise.

Protection for witness in police or judicial detention.

16. (1) In cases where the witness entitled to a witness protection order is in police or judicial detention, the Competent Authority may pass necessary orders for ensuring appropriate protection measures for the safety of such witnesses. 20

(2) The officer in-charge of the police station or the jail, as the case may be, shall be responsible for giving effect to the protection orders made by the Competent Authority.

Evidence by Live Link.

17. (1) A Witness Protection Order may provide for a witness to give evidence by means of a live link. 25

(2) The concerned court, upon a request made by the Witness Protection Cell or the protected witness, may authorize the presentation of evidence through a live link.

(3) When, in respect of a threatened witness, an order for identity protection has been passed under section 13, his statement in the Court during trial shall be recorded *via* live link, as per the prescribed procedure and in such a manner that the accused and his pleader shall not be able to see the face or body of the witness: 30

Provided that the accused and his pleader shall, subject to the provisions of sub-section (3), be entitled to hear the voice of the witness during the recording of the statement.

(4) The Competent Authority, on its own or on an application made by the Witness Protection Cell or the threatened witness, if it is so satisfied, direct that while recording the statement referred to in sub-section (3), the voice of the witness shall be distorted and in that event, the accused or his pleader shall be entitled to hear the distorted voice: 35

Provided that the undistorted voice recording shall be preserved in a sealed cover and the Court trying the offence shall have the exclusive right of access to the undistorted voice. 40

(5) The Witness Protection Cell shall be responsible for making necessary technical arrangements for the live link presentation of evidence which includes ensuring the availability of appropriate equipment, secure communication channels and necessary support personnel to facilitate the smooth conduct of remote testimony. 45

(6) Witnesses testifying through a live link shall be sworn in and subject to the same rules and procedures as witnesses present in the courtroom:

Provided that the court shall ensure that the witness's testimony is conducted in a fair and impartial manner, with the ability for all parties to cross-examine the witness effectively.

(7) The Competent Authority shall take necessary measures to safeguard the integrity of the live link testimony which shall include verifying the witness's identity, ensuring the privacy and confidentiality of the proceedings and taking appropriate steps to prevent tampering or unauthorized access to the live link connection.

(8) Live link testimony shall be admissible as evidence in the same manner as testimony given in person in the courtroom:

Provided that the Competent Authority shall consider the credibility and reliability of the testimony based on the circumstances of the case and the witness's demeanor, irrespective of the mode of testimony.

(9) The court or the Competent Authority shall have the discretion to allow or disallow the presentation of evidence through a live link based on the interests of justice, the needs of the case and the protection of the witness and may modify or terminate the live link arrangement if it is deemed necessary for the proper administration of justice.

(10) The High Court of each State or Union Territory may issue rules or guidelines regarding the presentation of evidence through live link technology, outlining the procedures, standards and requirements for its use:

Provided that these rules and guidelines shall be consistent with the provisions of the Indian Evidence Act, 1872.

18. The witness protection order may be withdrawn by the Competent Authority, in such manner as may be prescribed, in the following circumstances,—

Withdrawal of witness protection order.

(a) where the witness protection order is not extended beyond its original duration by the Competent Authority;

(b) where upon review thereof, the threat perception is reported as reduced to the Competent Authority's satisfaction;

(c) on the witness's personal request for its withdrawal and its endorsement by the officer conducting the investigation:

Provided that where the protection order relates to the change of identity of the witness, the witness's original identity may be restored for their benefit on the cessation of the said order.

19. (1) The Competent Authority may forthwith terminate the witness protection order where it is proved to its satisfaction that the witness sought protection under the Act by furnishing false information or by misrepresentation:

Termination of witness protection order.

Provided that prior to termination of the protection order, the Competent Authority shall provide the witness with a written show cause notice of the proposed termination and an opportunity to be heard after receipt of the reply.

(2) In case it is found that the witness had submitted a false application,—

(a) the Competent Authority shall initiate proceedings for recovery of the expenditure incurred from the Witness Protection Fund; and

(b) the said delinquent witness shall be liable to be punished with imprisonment for a term which may extend up to three months and also fine which may extend up to one lakh rupees.

20. (1) All stakeholders including the police, the Prosecution, staff of the court, concerned 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 Act is shared with any person in any manner except with the Trial Court or the Appellate Court, upon issuance of a written order:

Confidentiality and preservation of records.

Provided that if such wrongful disclosure leads to the witness or his family members being physically harmed or in danger then the person found guilty of the disclosure shall be punished in the same manner as the person committing the crime against the witness under the relevant law under which the offender would be tried.

(2) The digital records pertaining to the case shall be encrypted with the encryption details available only with Home Department/Ministry of the appropriate Government. 5

(3) All the records pertaining to the proceedings under this Act shall be preserved till such time the related trial or appeal thereof is pending before a court of law:

Provided that after one year of disposal of the last court proceedings, the hard copy of the records may be weeded out by the Competent Authority after preserving the scanned soft copies of the same in an encrypted form. 10

Offences and penalty.

21. (1) Any person who discloses any confidential information relating to the identity, whereabouts or any other personal information of a witness who is being protected under the provisions of this Act, to any third party, in contravention of the provisions of this Act without authorization of the Competent Authority shall be guilty of an offence under the Act. 15

(2) Any person guilty of an offence under sub-section (1), shall be punished with imprisonment for a term which may extend upto three years and also a fine of one lakh rupees.

Appeal.

22. Any person aggrieved by an order passed by the Competent Authority under this Act, may prefer an appeal against such order to the High Court having jurisdiction in the matter, within thirty days from the date of such order, in such manner as may be prescribed. 20

Power of appropriate Government to issue direction.

23. Without prejudice to the foregoing provisions of this Act, the Competent Authority, shall, in exercise of its powers or the performance of its functions under this Act, be bound by such directions on questions of policy, as the appropriate Government, may give in writing to it from time to time. 25

Power of Central Government to give directions and frame model rules.

24. The Central Government may, give such directions as it may consider necessary to the State Governments for the effective implementation of the provisions of this Act and frame model rules in respect of all or any of the matters with respect to which the appropriate Government may make rules under this section and where any such model rules have been framed in respect of any such matter, they shall apply to the State or Union Territory until the rules in respect of that matter are made by the appropriate Government. 30

Protection of action taken in good faith.

25. No suit, prosecution or other legal proceedings shall lie against the appropriate Government, Competent Authority or any officer, employees, agency or person acting under the direction either of the appropriate Government or the Competent Authority for anything which is in good faith done or intended to be done in under this Act. 35

Power to make rules.

26. (1) The appropriate Government may, by notification in the Official Gazette, and subject to the condition of previous publication, make rules for carrying out the purposes of this Act.

(2) Every rule and every regulation made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule. 40

(3) Every rule and every regulation made by the State Government under this Act shall be laid, as soon as may be after it is made, before each House of the State Legislature 50

where it consists of two Houses, or where such Legislature consists of one House, before that House.

27. The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.

Act not in derogation of any other law.

5 **28.** (1) If any difficulty arises in giving effect to the provisions of this Act, the appropriate Government may, by order in the Official Gazette, make such provisions not inconsistent with such provisions of this Act as appear to it to be necessary or expedient for removing the difficulty:

Power to remove difficulties.

10 Provided that no such order shall be made after the expiry of a period of two years from the commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of the Parliament or each House of the State Legislature where it consists of two Houses, or where such Legislature consists of one House, before that House, as the case may be.

STATEMENT OF OBJECTS AND REASONS

Need for witness protection in India stems from the critical role played by witnesses in the criminal justice system. Witnesses can provide vital information and evidence that can lead to successful prosecution of the offenders while paving the way for deliverance of justice. However, witnesses are often threatened, intimidated or subjected to violence, endangering their lives. Lack of fool proof protection in the prevailing system discourages common people to come forward as witness, thus compromising the credibility of the justice system and undermining the right to fair trial.

The Hon'ble Supreme Court of India has emphasized time and again for a robust witness protection framework in India. Numerous studies conducted abroad have shown a direct link between improved criminal conviction rate and a strong witness protection system. Thus, there is an urgent need to establish a comprehensive witness protection program that can safeguard and instil confidence amongst the witnesses to encourage their active participation in criminal proceedings.

The Witness Protection Bill, 2023 aims to create a strong framework for witness protection while addressing the challenges faced by witnesses to boost truth-telling and strengthening the criminal justice system.

The proposed Bill seeks to ensure the protection of witnesses by —

- i. providing effective protection measures wherein witnesses can freely and fearlessly testify without undue influence or fear of reprisals by establishing a comprehensive legal framework for witness protection encompassing procedures for witness assessment, the application process, provision of protection measures, monitoring and support services etc.;
- ii. creating mechanisms for accountability and oversight in the implementation of witness protection measures by establishing a Witness Protection Authority and Witness Protection Cells responsible for inter alia assessing witness eligibility, granting protection and monitoring the effectiveness of protection measures;
- iii. setting up a Witness Protection Fund to provide financial assistance to witnesses under the program;
- iv. imposing stringent penalties on persons who disclose the identity of a witness.

The Bill seeks to achieve the above objectives.

S. NIRANJAN REDDY

FINANCIAL MEMORANDUM

Clause 3 of the Bill states that the appropriate Government shall constitute a body to be known as the Witness Protection Authority or Competent Authority in every district there under, to implementing the provisions of this Act.

Clause 5 provides that the appropriate Government shall constitute a Witness Protection Cell comprising of such number of officers and staff as may be prescribed.

Clause 6 provides that the appropriate Government shall establish a Witness Protection Fund from which the expenses incurred for the implementation of the witness protection order passed by the Competent Authority and other expenditures related to implementation of the provisions of the Act, shall be met.

Clause 10 pertains to the types of witness protection measures to be provided to witnesses under protection, which shall include making arrangement with the telephone company to change the witness's telephone number or assign him or her an unlisted telephone number; installing installation of security devices in the witness's home such as security doors, CCTV, alarms, fencing etc.

Clause 15 provides for relocation of witnesses, in appropriate cases.

The Bill, therefore, if enacted, will involve expenditure from the Consolidated Fund of India. It is, however, not possible at this stage to estimate the actual expenditure likely to be involved.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 25 of the Bill empowers the appropriate Government to make rules and/or regulations for carrying out the purposes of the Bill. Clause 28 of the Bill empowers that the appropriate Government may by an order make provisions for removing any difficulty that may arise in implementing any provisions of the Act. As the rules and/or regulations will relate to matters of detail only, the delegation of legislative power is of a normal character.

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to provide adequate protection and assistance to witnesses in criminal cases and to establish a procedure and mechanism to provide such protection and for matters connected and incidental thereto.

(Shri S. Niranjan Reddy, MP)