

AS INTRODUCED IN THE RAJYA SABHA  
ON THE 13TH MARCH, 2020

**Bill No. VII of 2020**

THE VICTIM AND WITNESS PROTECTION AND ASSISTANCE  
BILL, 2020

A

BILL

*to provide adequate protection and assistance to victims and witnesses  
in criminal cases.*

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

1. (1) This Act may be called the Victim and Witness Protection and Assistance Act, 2020.

Short title,  
extent and  
commencement.

5 (2) It extends to the whole of India.

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

Definitions.

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

(a) 'bodily injury' means—

- (1) a cut, abrasion, bruise, burn, or disfigurement;
- (2) physical pain;
- (3) illness; 5
- (4) impairment of the function of a bodily member, organ, or mental faculty;
- (5) any other injury to the body, no matter how temporary.

(b) 'law enforcement officer' means an officer or employee of the Government, or a person authorized to act for or on behalf of the Government or serving the Government as an adviser or consultant— 10

(i) authorized under law to engage in or supervise the prevention, detection, investigation, or prosecution of an offense; or

(ii) serving as a probation or pretrial services officer under this title;

(c) 'misleading conduct' means—

(i) knowingly making a false statement; or 15

(ii) intentionally omitting information from a statement and thereby causing a portion of such statement to be misleading, or intentionally concealing a material fact, and thereby creating a false impression by such statement; or

(iii) with intent to mislead, knowingly submitting or inviting reliance on a writing or recording that is false, forged, altered, or otherwise lacking in authenticity; or 20

(iv) with intent to mislead, knowingly submitting or inviting reliance on a sample, specimen, map, photograph, boundary mark, or other object that is misleading in a material respect; or

(v) knowingly using a trick, scheme, or device with intent to mislead; 25

(d) 'official proceeding' means—

(i) a proceeding before a Court of Session, Chief Judicial Magistrate, Chief Metropolitan Magistrate, Judicial Magistrate first class and second class Metropolitan Magistrate or High Court; or

(ii) a proceeding before an investigation or law enforcement agency which is authorized by law; 30

Order of restitution.

**3.** (1) The Court, when sentencing an accused convicted of an offence under Indian Penal Code, 1860 may order, in addition to or in lieu of any other penalty authorized by law, that the defendant make restitution to any victim of the offence. 45 of 1860.

(2) If the court does not order restitution, or orders only partial restitution, under this section, the court shall state on the record the reasons therefor. 35

(3) The order may require that such accused—

(a) in the case of an offense resulting in damage to or loss or destruction of property of a victim of the offence—

(i) return the property to the owner of the property or to a person designated by the owner; or 40

(ii) if return of the property under sub-clause (i) is impossible, impractical, or inadequate, pay an amount equal to the greater of—

(a) the value of the property on the date of the damage, loss, or destruction, or 45

(b) the value of the property on the date of sentencing, less the value, on as the date the property is returned, of any part of the property that is returned;

(b) in the case of an offence resulting in bodily injury to a victim—

5 (i) pay an amount equal to the cost of necessary medical and related professional services and devices relating to physical, psychiatric and psychological care, including non-medical care and treatment rendered in accordance with a method of healing recognised by the law of the place of treatment;

(ii) pay an amount equal to the cost of necessary physical and occupational therapy and rehabilitation; and

10 (iii) reimburse the victim for income lost by such victim as a result of such offence.

(c) in the case of an offence resulting in bodily injury which results in the death of a victim, pay an amount equal to the cost of necessary funeral and related services, in addition to amount given in clause (b).

15 (d) in any case, if the victim or if the victim is deceased, the legal heir of the victims consents make restitution in services in lieu of money, or make restitution to a person or organization designated by the victim or the legal heir.

20 (4) (a) The Court shall not impose restitution with respect to a loss for which the victim has received or is to receive compensation, except that the Court may, in the interest of justice, order restitution to any person who has compensated the victim for such loss to the extent that such person paid the compensation and such order of restitution shall require that all restitution to victim under such order be made before any restitution to any other person under such order is made.

(b) Any amount paid to a victim under an order of restitution shall be set off against any amount later recovered as compensatory damages by such victim in:—

25 (i) any civil proceeding; and

(ii) any settlement proceeding.

(5) The Court may require that such accused make restitution under this section within a specified period or in specified installments.

30 (6) If such accused is placed on probation or parole under this title, any restitution ordered under this section shall be a condition of such probation or parole and the court may revoke probation and the Parole Commission may revoke parole if the accused fails to comply with such order:

35 Provided that in determining whether to revoke probation or parole, the court or Parole Commission shall consider the employment status of the accused earning ability, financial resources, the wilfulness of the accused's failure to pay, and any other special circumstances that may have a bearing on the ability of accused to pay.

(7) An order of restitution may be enforced by the enforcement agency of the government named in the order to receive the restitution in the same manner as a judgement or decree in a civil case.

40 4. (1) The Court, in determining whether to order restitution under section 3 and the amount of such restitution, shall consider the amount of the loss sustained by any victim as a result of the offence, the financial resources of the accused, the financial needs and earning ability of the accused and the accused's dependents, and such other factors as the court deems appropriate.

45 (2) The Court may order the probation service of the court to obtain information pertaining to the factors set forth in sub-section (1) of this section and the probation service of the court shall include the information collected in the report of pre-sentence investigation or in a separate report, as the court directs.

Procedure for  
issuing order  
of restitution.

(3) The Court shall disclose to both the accused and the prosecution agency all portions of the pre-sentence or other report pertaining to the matters described in sub-section (1).

(4) Any dispute as to the proper amount or type of restitution shall be resolved by the court by the preponderance of the evidence and the burden of demonstrating the amount of the loss sustained by a victim as a result of the offence shall be on the prosecution agency, the burden of demonstrating the financial resources of the accused and the financial needs of the accused and such accused's dependents shall be on the accused and, the burden of demonstrating such other matters as the court deems appropriate shall be upon the party designated by the court as justice requires.

Formulation  
of guidelines  
for fair  
treatment or  
crime victims  
and witnesses.

5. (1) Within two hundred and sixty days after the date of enactment of this Act, the Central Government shall formulate and implement guidelines consistent with the purposes of this Act.

(2) Without prejudice to the generality of the provision contained in sub-section (1), these guideline shall *inter-alia* contain, that—

(i) Law enforcement personnel shall ensure that victims routinely receive emergency, social and medial services as soon as possible and are given information on the following:

(a) availability of victim compensation, where applicable;

(b) community based victim treatment programs;

(c) the role of the victim in the criminal justice process, including what they may expect from the system as well as what the system expects from them; and

(d) stages in the criminal justice process of significance to a crime victim, and the manner in which information about such stages may be obtained.

(ii) A victim or witness shall routinely receive information on steps that law enforcement officers and prosecution agency may take to protect victims and witnesses from intimidation.

(iii) All victims and witnesses who have been scheduled to attend criminal justice proceedings shall either be notified as soon as possible of any change in schedule which may affect their appearances or develop a system for alerting witnesses promptly by telephone or through email or otherwise.

(iv) Victims, witnesses, relatives of those victims and witnesses who are minors, and relatives of homicide victims shall if such persons provide the appropriate official with a current address and telephone number or email, receive prompt advance notification of judicial proceedings relating to their case, including —

(a) the arrest of an accused;

(b) the initial appearance of an accused before a judicial magistrate;

(c) the release of the accused pending judicial proceedings; and

(d) proceedings in the prosecution of the accused including entry of a plea of guilty, trial, sentencing, and, where a term of imprisonment is imposed, the release of the accused from such imprisonment.

(v) The victim of a serious crime, or in the case of a minor child or a homicide, the family of the victim, shall be consulted by the prosecution agency in order to obtain the views of the victim or family about the disposition of any state criminal case brought as a result of such crime, including the views of the victim or family about —

(a) dismissal;

(b) release of the accused pending judicial proceedings;

(c) plea bargaining.

5 (vi) Law enforcement agencies and prosecutor shall promptly return victim's property held for evidentiary purposes unless there is a compelling law enforcement reason for retaining it.

(vii) Victims and other prosecution witnesses shall be provided prior to court appearance, a waiting area that is separate from all other witnesses.

10 (viii) A victim or witness who so requests shall be assisted by law enforcement agencies and attorneys in informing employers that the need for victim and witness cooperation in the prosecution of the case may necessitate absence of that victim or witness from work and a victim or witness who, as a direct result of a crime or of cooperation with law enforcement agencies or prosecutors for the Government, is subjected to serious financial stain, shall be assisted by such agencies and prosecutors in explaining to creditors the reasons for such serious financial strain.

15 (ix) Victim and witness's assistance education and training shall be offered to persons taking courses at Government law enforcement training facilities and prosecutors for the Government so that victims and witnesses may be promptly, properly and completely assisted.

20 (x) may any other important assistance to victims and witnesses, such as the adoption of transportation, parking, and translator services for victims within the prmisses of the court be provided.

25 (xi) Public radio, television, multimedia and other publicity medium shall allot sufficient number of the broadcasting hours allocated to information provision are used to promote behavior and measures aimed at education and awareness of protection of victim and witnesses.

(xii) National information campaigns shall also be carried out to encourae the prevention and protection of victim and witnesses and Information about such initiatives may be included on local authority websites.

30 (xiii) The publicity work may be given to non-government organization having sufficient experience in this field.

(xiv) The implementation agency shall ensure that the guidelines one adhered by all the law enforcement agencies.

**6.** The Central Government shall, after due appropriation made by parliament by law in this behalf, provide requisite funds for carrying out the purposes of this Act.

Central  
Government  
to provide  
funds.

35 **7.** The Central Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Act.

Power to  
make rules.

## STATEMENT OF OBJECTS AND REASONS

Without the cooperation of victims and witnesses, the criminal justice system would cease to function yet with few exceptions these individuals are either ignored by the criminal justice system or simply used as tools to identify and punish offenders.

2. All, too often, the victims of a serious crime is forced to suffer physical, psychological, or financial hardship first as a result of the criminal act and then as a result of contact with a criminal justice system unresponsive to the real needs of such victim.

3. Although the majority of serious crimes falls under the jurisdiction of Session courts, the public prosecutor, has an important role to assume in ensuring that victims of crime, whether at the local, metropolitan or session court level, are given proper treatment by agencies administering the criminal justice system.

4. Under current law, law enforcement and investigating agencies must have cooperation from a victim of crime and yet neither the agencies nor the legal system can offer adequate protection or assistance when the victims, as a result of such cooperation, is threatened or intimidated.

5. While the accused is provided with counsel who can explain both the criminal justice process and the rights of the accused, the victim or witness has not counterpart and is usually not even notified when the accused is released on bail, the case is dismissed, a plea to a lesser charge is accepted, or a court date is changed.

6. The victim and witness who cooperate with the prosecutor often find that the transportation, parking facilities, and child care services at the court are unsatisfactory and they are often made to share the pretrial waiting room with the defendant or his family and friends.

7. The victim who has lost valuable property to an accused, may lose it again for long periods of time to investigating agency, during the trial and sometimes is appeals, and many times that property is damaged or lost, which is particularly stressful for the elderly or poor.

8. With these objectives in mind, the Bill proposes to:—

(1) to enhance and protect the necessary role of crime victims and witnesses in the criminal justice process;

(2) to ensure that the central and state government all that is possible within limits of available resources to assist victims and witnesses of crime without infringing on the constitutional rights of the accused; and

(3) to provide a model legislation for State and local Governments.

Hence, this Bill.

DR. AMEE YAJNIK

#### FINANCIAL MEMORANDUM

Clause 5 provides for formulation of guidelines which include publicity, education and awareness of protection of victim and witnesses. As the bill seeks to provide for the protection of victim and witnesses, its enactment is likely to result in expenditure by the government from the Consolidated Fund of India. Clause 6 makes it mandatory for the Central Government to provide requisite funds for carrying out the purposes of the Bill.

It cannot be estimated at this stage as how much expenditure will be incurred as of now but it is estimated that a recurring expenditure of rupees five hundred crore will be spent.

A non-recurring expenditure of rupees hundred crore will also be spent.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 7 of this Bill empowers the Government to make rules for carrying out the provisions of this Bill. The rules will relate to matters of details only. Therefore, the delegation of legislative power is of a normal.



RAJYA SABHA

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in criminal cases.

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*(Dr. Ameer Yajnik, M.P.)*