

Bill No. 341 of 2015

THE WITNESS PROTECTION BILL, 2015

By

SHRI OM BIRLA, M.P.

A

BILL

*to provide compulsory protection to all persons coming forth to
provide information as witnesses in a court of law
within the territory of India.*

Be it enacted by Parliament in the Sixty-sixth Year of the Republic of India as follows:—

1. (1) This Act may be called the Witness Protection Act, 2015.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

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

Short title,
extent and
commencement.

Definitions.

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

(a) "appropriate Government" means in the case of a State the Government of that State and in all other cases, the Central Government;

(b) "court" includes all courts which are empowered to try offences under any law for the time being in force in India;

(c) "identity" means the name, reputation, *alias*, image, and any other portrayal or characteristics of any kind of the protectee (whether real or virtual and in any format whether in film, by way of a photograph, virtual, electronic or otherwise) including Government and private records of the protectee and all other characteristics of the protectee by which he may be recognized;

(d) "judicial proceedings" include any proceeding in the course of which evidence is or may be legally taken on oath;

(e) "National Council" means the National Witness Protection Council established under section 8;

(f) "officers of the court" means any person who has an obligation to promote justice and effective operation of the judicial system, including judges and attorneys who appear in court and administrative officers of the courts;

(g) "protectee" means any individual who has been or might be threatened, coerced, attacked, injured or influenced in any manner whatsoever as may be determined by the court in which the proceedings involving him as a witness are going on;

(h) "protectee's residence" means any place or institution (not being a police lock-up or jail), which in the opinion of the competent authority, may be a place of safety for the witness and/or his relatives;

(i) "State Council" means the State Witness Protection Council established by the State Government under section 8; and

(j) "witness" means a person who is acquainted with the facts of a crime and who is able to produce evidence of such fact either by providing oral, written or by any intelligible gestures in any judicial proceeding.

Process of availing protection.

3. (1) The witness may apply for witness protection at the court in which the proceedings are being heard at any stage of the proceeding or within the jurisdiction of the police station that he falls under.

(2) When an application is made at a police station, the station officer shall ensure that the application is processed and produced before a court within forty-eight hours of receipt.

(3) The Police officer shall investigate the threat to the witness as mentioned in the application and shall produce the witness before the court, submit a report of his investigation and recommendations to the court.

(4) The Police officer without unnecessary delay shall bring the person before the court before which he is required by law to produce such person.

(5) Pursuant to the said application, the judge of the competent court shall with the aid of the State Council constitute a witness protection cell comprising of the Station House Officer of the appropriate police station, the Investigating Officer, the Advocate for the Witness, the judge and such other person that the State Council may appoint.

(6) The witness protection cell shall do all things necessary for the purpose of ensuring the witnesses' right under section 3.

(7) All aids of law shall be provided to the applicant and he shall have access to relevant legal aid if necessary.

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4. (1) The protectee shall be provided protection in maintaining his right to life and it shall be ensured that there is no harm to body, property, mind or associated people with an intention to influence the protectee's actions.

Instances and stages of protection.

5 *Explanation.*—For the purpose of this sub-section, "associated people" means any person who stands in some relation to or has some bearing or connection with or has an association or connection with the witness.

(2) The appropriate Government shall provide such protection, as may be necessary, at each of the following stages of the process of law as per the protectee's request and consent—

10 (a) during the process of investigation and inquiry;

(b) during the trial; and

(c) after the trial as warranted by the court as per the threat perception against the individual.

15 5. (1) It shall be the duty of the appropriate Government to ensure that the identity of the witness enrolled in the witness protection programme is protected.

Provisions for safeguarding witness identity.

(2) Such protection to witnesses shall only be provided by the State in matters regarding criminal offences.

20 (3) The nature of the protection may be determined by the judge of the competent court depending upon the gravity of the offence committed and the likelihood of harm to the witness.

(4) The judge may grant any of the following or a combination thereof of the following protections to the witness—

(a) the witness or protectee under the witness protection programme shall attend all trials under in-camera proceedings in the presence of a judicial officer;

25 (b) the protectee shall have the option to request change in his identity for the duration of the trial or permanently or of a duration that exceeds the trial but is not permanent;

30 (c) the protectee shall have the option to request a change of residence for the duration of the trial or permanently or of a duration that exceeds the trial but is not permanent;

(d) the judge shall have the power to maintain the anonymity of the protectee in such cases;

(e) the protectee shall have the right to request that his or her name or residential address not be revealed in public and that it be redacted in official records;

35 (f) The judge may permit the witness or the protectee to provide evidence and allow the defendant to cross examine the witness by a two-way camera.

(5) It shall be the duty of the appropriate Government to ensure that the protectee enjoys the option to practice an alternate occupation that does not compromise his security or the integrity of the case:

40 **Provided that if such a mechanism is not possible, the appropriate Government shall provide an allowance equal to and commensurate to the standard of living of the individual before his participation in the case:**

45 **(6) In case the protectee is a juvenile, it shall be the duty of the appropriate Government to ensure the continuity of his education until the completion of all levels of the present education programme:**

Provided that if protectee wishes to enroll in further education, the appropriate Government shall ensure the availability of the same through distance mode of education and in doing so the security of the individual shall not be compromised in any manner whatsoever.

Custody of original details of the protectee.

6. (1) During the course of the investigation and the trial, the details of the Protectee shall be under the protection and custody of the National Witness Protection Council and State Witness Protection Council. 5

(2) The details may be released to individuals or specified agencies on the receipt of an order from the High Court with the appropriate jurisdiction or the Supreme Court, as the case may be. 10

(3) Any other authority or individual who access such details without an order from a High Court or the Supreme Court shall be in the contempt of court and be liable to criminal proceedings.

Transfer of Cases out of original jurisdiction.

7. The High Court or the Supreme Court, as the case may be, presiding over the court of original jurisdiction shall determine the relevance of transferring the case to a place or court, in accordance with section 406 and section 407 of the Code of Criminal Procedure, 1973. 15

2 of 1974.

Constitution of National Witness Protection Council.

8. (1) The Central Government shall, by notification in the Official Gazette, constitute a Council to be known as the National Witness Protection Council.

(2) The National Council shall consist of,— 20

(a) a retired Chief Justice of India who shall be the Chairperson of the National Council to be appointed by the President on recommendation of the Selection Committee;

(b) such number of members not exceeding six whole time members, as recommended by the Selection Committee, to be appointed by the Central Government: 25

Provided that—

(i) not more than two members shall be from a field having proven experience and expertise in social work;

(ii) not more than one member shall be from legal field not below the position of a retired judge of the Supreme Court or a High Court; and 30

(iii) two members from the police not below the position of Director General of Police or Commissioner of Police.

(c) no social worker shall be appointed as a member of the Board unless such person has been actively involved in rehabilitation or welfare activities for atleast seven years. 35

(d) not more than one member from the National Legal Service Authority, who shall act as the co-ordinating member of the council where cases of inter-State protection are involved.

(3) The tenure of the Chairperson and every whole time member of the National Council shall be three years from the date on which he assumes office as such and shall not be eligible for re-appointment. 40

(4) An officer, not below the rank of Joint Secretary to the Government of India, shall be the Member-Secretary of the National Council.

(5) The Central Government shall provide such number of officers and other employees as may be necessary for efficient discharge of functions by the National Council under this Act. 45

(6) The Selection Committee for selection of the Chairperson and members of the National Council shall consist of—

(a) Chief Justice of India—Chairperson, *ex officio*;

(b) Union Law Minister—member, *ex officio*; and

5 (c) retired Chief Justice of a High Court, Member.

9. (1) The functions and responsibilities of the National Council shall include—

Functions of
the National
Council.

(a) laying down policies and principles for making the witness protection programme available under the provisions of this Act;

10 (b) overseeing implementation of protection to witness after the person has been granted protectee status by the court of law;

(c) monitoring and evaluating implementation of the witness protection programme at periodic intervals and provide for independent evaluation of programmes and schemes implemented in whole or in part by funds provided under this Act;

15 (d) making special efforts to enlist the support of voluntary social welfare institutions working at the grass-root level;

(e) allocating funds to the State Witness Protection Councils and the witness cell;

(f) conducting regular inspection of any facilities provided under this Act to the witness and take immediate measures for transfer of witness or take necessary action;

20 (g) coordinating and monitoring the functioning of State Councils, witness protection cell and voluntary social service institutions and other legal services organisations and give general directions for the proper implementation of the witness protection programme; and

(h) admitting any complaints regarding non-implementation of this Act.

25 (2) The National Council shall work in coordination with other agencies in the discharge of its functions under this Act.

10. The President, in the case of the Chairperson and the Central Government in consultation with the Chairperson, in the case of a whole time member, by order, remove from office, the Chairperson or any such member of the National Council, if he—

Removal of
Chairperson
and members.

30 (a) has been adjudged an insolvent; or

(b) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or

(c) has become physically or mentally incapable of acting as Chairperson or member; or

35 (d) has acquired such financial or other interests as is likely to affect prejudicially his functions; or has so abused his position as to render his continuance in office prejudicial to the public interest:

40 Provided that the Chairperson or any member of the National Council shall not be removed under clause (d) of sub-section (1) unless he has been given a reasonable opportunity of being heard in the matter.

11. The National Council shall, wherever appropriate, act in coordination with other Governmental and non-Governmental agencies, to implement the provisions of this Act.

National
Council to
implement
provisions of
this Act.

Constitution of State Witness Protection Council.

12. (1) Every State Government shall constitute a Council to be known as State Witness Protection Council for the State to exercise the powers and perform the functions conferred on or assigned to, a State Council under this Act.

(2) A State Council shall consist of—

(a) a Chairperson, on whole-time basis, to be appointed by the Chairperson of the National Council in consultation with the Chief Justice of High Court of the State who shall be a retired judge of the concerned High Court; 5

(b) police officer not below the position of Deputy Commissioner of Police as member;

(c) such number of other members, possessing such experience and qualifications, as may be prescribed by the Central Government and the National Council, to be nominated by the Government in consultation with the Chairperson of the State Witness Protection Council. 10

(3) The State Government, in consultation with State Council, appoint such number of officers and other employees for the discharge of functions of the State Council under this Act. 15

(4) The terms and other conditions of service of officers and other employees of the State Council shall be such as may be prescribed by the Central Government.

Functions of the State Council.

13. (1) The functions and responsibilities of the State Council shall include—

(a) overseeing implementation of protection to witness after the person has been granted protection by the court of law; 20

(b) ensuring the informed participation of the witness, in every step of the process after the person has been granted protection by law;

(c) ensuring that the person's rights are protected throughout the process of apprehending the inquiry, aftercare and rehabilitation; 25

(d) ensuring availability of legal aid through the legal services institutions;

(e) wherever necessary, providing an interpreter or translator, having such qualifications, experience, and on payment of such fees as may be prescribed, to the witness if he fails to understand the language used in the proceedings;

(f) directing the Police Officer to carry out the responsibilities of protecting the witness and protectee; 30

(g) allocating funds received by the State Council to various witness protection cells in the State;

(h) conducting regular inspection of any facilities or provided under the Act to the witness and take immediate measures for transfer of witness or take necessary action to ensure their continued and uncompromised protection; and 35

(i) admitting any complaints regarding implementation of the witness protection law.

(2) The Chairperson or any member of the State Council shall not be removed under clause (d) of sub-section (1) unless he has been given a reasonable opportunity of being heard in the matter. 40

Removal of Chairperson and members of State Council.

14. The Governor, in the case of the Chairperson, and the Central Government in consultation with the Chairperson, in the case of other members, by order, remove from office, the Chairperson or any such member of the State Council, if he—

(a) has been adjudged an insolvent; or 45

(b) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or

(c) has become physically or mentally incapable of acting as Chairperson or member; or

5 (d) has acquired such financial or other interests as is likely to affect prejudicially his functions; or

(e) has so abused his position as to render his continuance in office prejudicial to the public interest:

10 Provided that the Chairperson or any member of the State Council shall not be removed under clause (d) of sub-section (1) unless he has been given a reasonable opportunity of being heard in the matter.

15. The salaries and allowance payable to and other terms and conditions of the Chairperson and members of the National Council and State Council, shall be such as may be prescribed:

Salary and allowances.

15 **Provided that neither the salary and allowances nor the other terms and conditions of service of the Chairperson and members shall be varied to their disadvantage after their appointment.**

20 **16. (1)** The National Council or the State Council, as the case may be, shall regulate its own procedure for the purposes of holding its meetings (including quorum of such meetings) and granting permissions under this Act.

Regulation of procedure for holding meetings.

(2) All orders and decisions of the National Council or the State Council, as the case may be, shall be published in such manner as may be prescribed.

17. Whoever contravenes the provisions of this Act shall be liable—

Punishments for contravention of the provisions of this Act.

45 of 1860. 25

(a) to be punished in accordance with Chapters XVI and XVII of the Indian Penal Code, 1860 if found guilty in a judicial proceedings of committing an offence in relation to a victim.

(b) in case of a Police officer and officer of the State and relevant State authorities who abdicate their responsibilities or do not perform their duties, to a fine which may extend up to fifty thousand rupees.

30 **18.** Whoever, having any confidential information in relation to the protectee or his whereabouts under this Act, divulges such information to any third party in contravention of this Act, then such person shall be punished for a term which may extend upto three years and also a fine of one lakh rupees.

Punishment to person divulging information of protectee.

35 **19. (1)** The protections under this Act shall be void and terminated if the Court of Law establishes that the protectee gave false testimonies or deliberately misled the authorities and the court.

Termination of protection under this Act.

(2) If the protection of a protectee is terminated under sub-section (1), he shall be liable to be punishable with imprisonment for a term which may extend up to six months and also fine which may extend up to two thousand rupees.

40 **20.** It shall be the duty of the appropriate Government to ensure that the witness is made aware of his rights under this Act and ascertain that he can decide to exercise or not exercise the provisions and protections available to him under this Act.

Duty to inform the witness of his rights.

45 **21.** No suit, or other legal proceedings shall lie against the Central Government, State Government, National Council or State Council or any officer, employees, agency or person acting under the direction either of the Central Government, State Government, National Council or the State Council which is in good faith done or intended to be done in presence of this Act.

Protection of action taken in good faith.

Power to
remove
difficulties.

22. (1) If any difficulty arises in giving effect to the provisions of his Act, the Central Government may, by an order published in the Official Gazette, after consultation with the National Council, make such provisions, not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removing the difficulty.

(2) Every order made under this section shall, as soon as may be after it is made, be laid 5
before each House of Parliament.

STATEMENT OF OBJECTS AND REASONS

The Honourable Supreme Court in the case of Himanshu Singh Sabharwal Vs. State of Madhya Pradesh and Ors. 2008, observed that "witnesses are the eyes and ears of the justice system". When a witness to an offence is threatened, killed or harassed, it is not only the witness who is threatened, but also the fundamental right of a citizen to a free and a fair trial is vindicated. When we as the State fail to protect a witness, we as a State fail to uphold our National Motto "Satyameva Jayate".

In Neelam Katara Vs. Union of India case the Supreme Court has observed that the edifice of administration of justice is based upon witnesses coming forward and deposing without fear or favour, without intimidation or allurements in court of law. If witnesses are deposing under fear or intimidation or for favour or allurement, the foundation of administration of justice not only gets weakened, but it may even get obliterated. Law Commission in its 198th Report 2005 had also addressed the subject of Witness Protection in India at length.

The need is to strengthen the justice delivery system by implementing a robust law pertaining to witness protection in a manner which ensures a fair trial to both the parties.

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

(i) formulation of witness protection programme to be provided to a witness at all stages *i.e.* during the course of an investigation; during the process of trial; and after the judgment is pronounced;

(ii) constitution of a "witness protection cell" to prepare a report for the judge of the trial court to examine and grant protection to the witness referred a "protectee" after being admitted in the programme;

(iii) constitution of National Witness Protection Council and State Witness Protection Councils to ensure implementation of witness protection programme in its letter and spirit;

(iv) providing safeguards to ensure protection of Identity of witness;

(v) providing transfer of cases out of original Jurisdiction to ensure that the witness can depose freely;

(vi) providing stringent punishment to the persons contravening the provisions; and

(vii) prescribing stringent actions against false testimonies and misleading statements.

The Bill seeks to achieve the above objectives.

NEW DELHI;
November 17, 2015.

OM BIRLA

FINANCIAL MEMORANDUM

Clause 5 of the Bill provides that appropriate Government shall provide an allowance to the protectee during course of investigation. It also provides for providing distance modes of education to the protectee. Clause 8 seeks to constitute a National Witness Protection Council. Clause 12 seeks to constitute State Witness Protection Council by State Government. It also provides for appointment of officers and employees to the Council. Clause 15 provides for salary and allowances payable to Chairperson and members of National Council and the State Councils. The expenditure relating to State Governments shall be borne out of the Consolidated Funds of States concerned. The expenditure in relation to Union Territories shall be incurred from the Consolidated Fund of India. The Bill, therefore, if enacted would involve expenditure from the Consolidated Fund of India. It is estimated that a recurring expenditure of about rupees five hundred crore per annum would be involved from the Consolidated Fund of India.

A Non-recurring expenditure of about rupees twenty crore is also likely to be involved.

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(Shri Om Birla, M.P.)