

Sindh Witness Protection Act 2013

Current Status

The Sindh Witness Protection Act, 2013 was passed on September 18, 2013 by the Provincial Assembly to provide complete Government security to witnesses in criminal cases. However, two years later, the 2013 Act is awaiting on-ground presence through proper and uniform implementation. It was only in October 2014 that the Sindh police department sent a formal request for establishment and funding of a Witness Protection Unit to the Provincial Government. The Government has, in turn, directed the Additional Inspector General, CID, who is also the Secretary of the Witness Protection Board, to convene a meeting for this purpose.

About The Legislative Brief

The objective of this Brief is to assist legislators and media in understanding the context, objectives and issues relating to the existing framework on witness protection. It is also produced to initiate a debate whereby various Provincial as well as the Federal Government can initiate required witness protection legal regimes.

Acknowledgments and Disclaimer

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Highlights of the Act

1. The Sindh Witness Protection Act, 2013 [hereinafter referred to as the “2013 Act”] is meant to provide for protection of witnesses to enable them to give evidence in criminal proceedings in Sindh.
2. A witness includes a person who has given or agreed to give, or may be required to give evidence in relation to the commission or possible commission of a serious offence.
3. A 'threatened' witness means a person who has agreed to give or is required to give evidence regarding a serious offence and whose life and/or property or that of his close relatives is endangered.
4. The Witness Protection Unit is to facilitate and implement the Witness Protection Programme for the protection and safety of a protected witness i.e. a person/witness who is placed under protection under the Act 2013.
5. The Government of Sindh shall establish a Witness Protection Advisory Board to advise on formulation of witness protection policy and oversee the administration of the Witness Protection Unit.
6. The protection of witnesses placed in the Witness Protection Programme may take the following form:
 - (i) Allowing the witness to establish a new identity
 - (ii) Allowing the witness to conceal his identity during the trial, etc.
 - (iii) Allowing the witness to give evidence through video conferencing
 - (iv) Relocating the witness
 - (v) Providing accommodation to the witness
 - (vi) Providing transport for the property of the witness
 - (vii) Providing financial assistance to the witness to obtain means of livelihood
 - (viii) Providing compensation to the legal heirs in the event that the protected witness is killed during his participation in the Witness Protection Programme
 - (ix) Making arrangements for the security of the witness for a reasonable period of time
 - (x) Providing the above facilities and/or protection to the family members of the witness if he so demands
7. The Witness Protection Unit is to be headed by the Additional Inspector General of Police (AIGP), CID Sindh as the Chief Witness Protection Officer.
8. The Chief Witness Protection Officer shall be responsible for the decision regarding inclusion of a witness in the Witness Protection Programme after considering the recommendations of a committee of officers including a representative of the Home Department, Government of Sindh, AIGP Special Branch, DIGP Headquarters, DIGP of the concerned Range [where the case is registered].
9. The Chief Witness Protection Officer shall enter into a written agreement with a witness before placing him in the Witness Protection Programme.
10. The Witness Protection Unit may apply to the Court for an order authorizing a specified person or class of persons to make a new entry in the register of birth, register of death or register of marriages in respect of a witness and/or to issue to the witnesses a new identity document of a kind previously issued to the witness.
11. The Court may pass a witness protection order where it is satisfied that the life or safety of the person may be endangered by his act of being a witness. In such cases the proceedings of the Court shall be conducted in camera and record of the proceedings shall be sealed.
12. The Chief Witness Protection Officer may terminate the witness protection agreement for, inter-alia, the following reasons:
 - (i) If the protected witness deliberately breaches a requirement or undertaking relating to the Witness Protection Programme; or
 - (ii) The witness willfully furnishes misleading information; or
 - (iii) The witness' behaviour endangers the safety of any other protected persons
13. It is an offence to disclose the identity, location of a protected witness.

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Executive Summary

The Sindh Witness Protection Act, 2013, which was passed on September 18, 2013 by the Provincial Assembly of Sindh, still awaits on-ground implementation.

The rates of terrorism and organised crime in Pakistan necessitate the protection of witnesses. In these changed circumstances in Pakistan, the Province of Sindh enacted legislation in 2013 to address this issue. The need was raised to legislate and implement for Witness Protection Programme(s). For example; of the 247,827 criminal cases disposed of in Punjab during the year 2014 a large number viz 30,642 resulted in acquittals under section 249-A Cr. P. C. due to resiling of witnesses and the position in Sindh was similar. Sindh is the first province, which has taken initiative to enact such legislation, which is equally required in whole country, but the implementation of the Act is direly required.

The Act states that all citizens have a civic duty to give testimony as witnesses, if so required, by the criminal justice system. However, the State has a corresponding duty to protect witnesses against undue pressure, intimidation and/or threats to the lives and/or property of the witnesses or their close relatives.

Analysis of 2013 Act

Witnesses

Section 2(n) defines witness means a person who has made a statement, or has given or agreed or may be required to give evidence in relation to the commission or possible commission of a serious offence. The said definition goes on to include a person who, by association or relation to the person giving evidence, requires protection. Section 2(n)(iv) includes a person who “for any other reason, may require protection or other assistance under this Act”. The witness protection laws of some countries straightforwardly include those judges, prosecutors, police and in some instances journalists, as persons entitled to witness protection. There is a dearth of hard data with respect to number(s) of these judges, prosecutors, police personnel and journalists facing intimidation in connection with their work insofar as it relates to the criminal justice system. However, we are all aware of the anecdotal evidence in this regard. Reports of killing of judges, prosecutors, police and/or journalists connected to criminal justice system in Sindh, for instance the killing of witnesses to the journalist Wali Babar's killing, point to stark ground realities. Definition of 'witness' as laid down in section 2(n)(iv) needs to be expanded so as to afford protection to judges, prosecutors, police personnel and/or journalists connected

with sensitive, high profile terrorism or organised crime related cases.

Implementation of 2013 Act:

In the Pakistani context giving of new identities to and relocation of witnesses seems unworkable for the following reasons:

- (i) Relocation of witnesses with new identities involves enormous costs to remove witnesses and families from their current location to a safe area, assistance in terms of finding housing, employment and payment of some sort of subsistence payment till the witness(s) becomes independent
- (ii) Those very police service personnel who are responsible for administering the Witness Protection Programme are often accused of corruption and intimidation of witnesses
- (iii) Witnesses have extended families and relatives and attendant social obligations which may not allow for a clean surgical removal of the witness and family from their current location and may compromise the secrecy required for the successful implementation of the Witness Protection Programme. For example a question arises as to what happens to the inheritance rights of a witness given a new identity? Would the State be responsible for compensating a protected person for the loss of his rights to inherit a particular property? What are the limits of the compensation that a protected person can expect?

Budget

There is no provision in the entire Act 2013 with respect to the budget for the Witness Protection Unit. Section 5(3)(c) of the Act 2013 indirectly refers to the same by conferring the approval of budgetary estimates of the Witness Protection Unit to the Witness Protection Advisory Board. Section 6(1) of the 2013 Act provides for the establishment of the Witness Protection Unit in the Home Department, Government of Sindh. Therefore, the Unit is presumably to be assigned a budget by the Home Department, Sindh. This is supported by the AIGP (Finance)'s letter¹ wherein the Additional Chief Secretary, Home Department, Government of Sindh was “requested that the matter may please be moved to the Government for allocation of funds Rs. 100,000,000/- [Rupees 100 million]” for creation of “Witness Protection Unit” in Sindh Police”. It is worth noting what whilst the Act 2013 was passed by the Provincial Assembly Sindh on September 18, 2013 assented by the Governor of Sindh on October 30, 2013 the initial request to approve budget for the Witness Protection Unit was sent a full year later. Naturally, without any budget the Witness Protection Unit is unable to commence work.

The Home Department, Government of Sindh responded to a

1. Mr. Javed Ali Mahar, Assistant Inspector General Police (Finance) letter No. B-II/1059; Dated: October 01, 2014

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further request² by the AIGP (Finance) to state that before any funds could be released for the financial year 2015-16 the Government had to establish the Witness Protection Advisory Board and that the AIG, CID may be advised to convene a meeting of the said Board so as to establish the Witness Protection Unit. In effect, the Government of Sindh has failed to establish either the Witness Protection Advisory Board or the Witness Protection Unit in two years since promulgation of the Act 2013. No budget has been allocated for the purpose to-date. There appears to be no political will to implement the Act 2013. In the absence of implementation the various criticisms or suggestions with respect to the Act 2013 are merely academic exercises.

Rules and Regulations

Section 29 empowers the Government to make rules for carrying out the purposes of the 2013 Act. To-date the Government of Sindh has failed to frame any rules under the 2013 Act. In any Act the legislature always sets out the broad guidelines and provisions whereas the final details are always left to rules and regulations. In the absence of said rules the 2013 Act cannot be effectively implemented. For example section 12(b) of the 2013 Act provides that one of the functions of the Witness Protection Unit shall be to determine the criteria for inclusion in the Witness Protection Programme. This is a basic prerequisite for implementing the Witness Protection Programme and yet in the absence of rules, regulations and/or guidelines this very basic step for implementation of the 2013 Act remains unattended.

Removal of a protected person from the Witness Protection Programme

Section 18(1)(b) allows the Chief Witness Protection Officer to terminate a Witness Protection Agreement for the reasons detailed therein. Section 19 provides that a person aggrieved by any decision of or steps taken by the Chief Protection Officer may apply to Government to review the decision or steps taken. This power to revoke or terminate a Witness Protection Programme should not have been assigned to the Witness Protection Officer alone. A protected person is, by definition, vulnerable and therefore in an un-equal bargaining position. The remedy for redressal of his/her grievance in terms of termination of the Witness Protection Agreement is entirely inadequate. A threatened witness who is unable to approach the courts of law and/or disclose his/her identity therein without the threat of harm to person or property cannot effectively approach the Government for review of the decision of the Chief Protection Officer in this regard. Ideally the decision to revoke or terminate a Witness Protection Agreement should be made by the Witness Protection

Advisory Board after notice is given to the protected person and hearing afforded to the same.

Corruption

Section 22 of the 2013 Act makes disclosure of information relating to the protected person an offence. However, section 22(2)(c) allows the Chief Protection Officer to disclose information in case the protected person is under investigation for or has been arrested for or is charged with a serious offence. It is submitted that, once again, the protected person has no effective recourse against the Chief Protection Officer's decision to disclose information with respect to his new identity or location. It is possible that former gang members or co-accused, etc. may file a false FIR against the protected person initiating an investigation which may lead to the ultimate disclosure of the protected person's whereabouts. The decision to disclose such information should again be subject to oversight of the Witness Protection Advisory Board.

Section 22(4) of the 2013 Act provides a punishment of imprisonment for a term up to 20 years for the offence(s) disclosing information with respect to the identity or whereabouts of the protected person.

Comparison with other Countries Witness Protection Legislation

There is no witness protection legislation presently in India. Efforts to protect witnesses are disjointed; for example under the Terrorist Disruptive Activities (Prevention) Act 1987 and the Prevention of Terrorism Act 2002 the courts may hold proceedings in camera in order to protect the identity and address of a witness.

In the USA, the Federal Witness Protection Programme has been in place since 1970. [Vide the Organized Crime Control Act 1970]. The US Marshals Service runs the programme. Between 1971 and 2013 the US Marshals Service has protected 8500 witness and 9900 family members. The budget of the US Marshals Service for the fiscal year 2015 is US \$ 1.195 billion (salaries and expenses).

The UK launched the 'UK Protected Persons Service' in 2012.³ Its budget is in the region of £ 20 million a year.

It is pertinent to note that the basic elements of witness protection programmes in the USA or the UK are present in the Act 2013, relocation, new identities, video links, etc. The main difference is in the budgets allocated for the purpose.

2. Home Department Sindh letter No.SO (Bud) HD-2 (96)/2015-16; Dated: October 29, 2015

3. i. U.S. Marshals Service Website.
ii. National Crime Agency Website

Sindh Witness Protection Act 2013**Recommendations for Legislators**

1. The Sindh Provincial Assembly should establish an 'Oversight Committee' [with any required legislative amendments to the 2013 Act] to monitor the effectiveness of the Witness Protection Programme. This would mitigate the possible “dangers” of the Witness Protection Programme being run by the Police.
2. The Sindh Government should ensure that a realistic and adequate budget is allocated to the Witness Protection Programme in order to ensure that the funds are available for relocating witnesses and allocating them new identities.
3. More mundane measures such as recording the testimony of threatened witnesses through video link from a safe location should be implemented in all district courts on a priority basis. This is a very practical measure, which can be put in place in a short period of time and would make the process of testifying relatively 'pain-free' and safer for witnesses.
4. The entire trial process needs to be concluded much more quickly; the more protracted a trial, the more at risk a threatened witness. The right of Pakistani citizens to “inexpensive and expeditious justice” is enshrined in Article 37(d) of the Constitution under principles of policy. This is the right of all citizens but is of special significance for witnesses, judges, prosecutors and police involved in sensitive/dangerous cases. A protracted trial is dangerous and stressful. Proceedings should be conducted in camera on a day-to-day basis within a given/fixed time period.
5. The 2013 Act should be amended so as to empower the Witness Protection Advisory Board to make the decision as to where or not the Witness Protection Programme should be terminated or revoked, rather than the Chief Protection Officer. Such decision should be made after notice to the protected person and after affording him hearing.
6. The 2013 Act should be amended so that the decision to disclose the identity or whereabouts of the protected person to a competent authority is not taken by the Witness Protection Officer but by the Witness Protection Advisory Board after notice to and after hearing the protected person.
7. The Act 2013 should be amended so as to provide for a specific budget to be allocated for the purposes of the Witness Protection Programme. The allocation of such budget should be independent of the budget for the Home Department, Sindh.