

THE KHYBER PAKHTUNKHWA WITNESS PROTECTION ACT, 2021.
(KHYBER PAKHTUNKHWA ACT NO. XXIV OF 2021)

CONTENTS

PREAMBLE

- 1. Short title, extent, application and commencement.
- 2. Definitions.
- 3. Witness Protection Board.
- 4. Functions of the Board
- 5. Witness Protection Unit
- 6. Protected person
- 7. Non-Court measures for protection
- 8. Assistance to witnesses
- 9. Special measures
- 10. Witness screening
- 11. Video link
- 12. Restricted entry in Court room
- 13. Rules for cross-examination
- 14. Prohibition of reporting
- 15. Anonymity of persons involved in criminal proceedings
- 16. Trial in jail
- 17. Punishment
- 18. Power to make rules

THE KHYBER PAKHTUNKHWA WITNESS PROTECTION ACT, 2021.

(KHYBER PAKHTUNKHWA ACT NO. XXIV OF 2021)

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**AN
ACT**

to provide for the protection of witnesses and other persons connected with criminal proceeding of sensitive nature.

WHEREAS it is expedient to provide for the protection of witnesses and other persons connected with the criminal proceedings of sensitive nature, connected in relation to investigation, prosecution and trial of criminal proceedings, offence of terrorism or a heinous offence and to provide for matters ancillary thereto and connected therewith;

It is hereby enacted by the Provincial Assembly of Khyber Pakhtunkhwa as follows:

1. Short title, extent, application and commencement.---(1) This Act may be called the Khyber Pakhtunkhwa Witness Protection Act, 2021.

(2) It shall extend to whole of the Province of the Khyber Pakhtunkhwa.

(3) It shall apply to the witnesses and all other persons, connected in relation to an investigation, prosecution and trial of criminal proceedings of heinous offence and offence of terrorism.

(4) It shall come into force at once.

2. Definitions.---In this Act, unless the same is defined in any other law for the time being in force, the following terms shall have the meanings as assigned to them,-

- (a) “Board” means the Witness Protection Board, established under section 3 of this Act;
- (b) “close protection service” means the provision of bodyguards or police assistance for purposes of protection from any assault, assassination or kidnapping or abduction of a witness, related to heinous offence;
- (c) “Court” means the Court, seized of a case to which this Act applies;
- (d) “criminal proceeding” means an investigation, inquiry or trial under the Code of Criminal Procedure, 1898 (V of 1898) or Anti-Terrorism Act, 1997 (Act No. XXVII of 1997), relating to an offence of terrorism or any other heinous offence;
- (e) “Government” means the Government of the Khyber Pakhtunkhwa;

- (f) “heinous offence” means an offence, punishable with death or imprisonment for life or for a term exceeding seven years and includes a sexual offence but does not include an offence of terrorism;
- (g) “high risk accused” means a person under investigation, charged with, or tried for, the commission of an offence of terrorism or a heinous offence and is considered to be a high risk for the persons connected with the criminal proceedings;
- (h) “Law Enforcement Agency” means and includes a body or agency, responsible for law enforcement, in relation to the prevention, detection and investigation of an offence;
- (i) “offence of terrorism” means an act defined as such in section 6 of the Anti-Terrorism Act, 1997 (XXVII of 1997) and includes such other offences under the said Act, as Government may, by notification in official Gazette, determine;
- (j) “prescribed” means prescribed by rules;
- (k) “protected person” means any person, who is extended protection under section 6 of this Act;
- (l) “protection” means a protection of a person (witness) which includes relocation or change of identity of, or provision of assistance or close protection services provided to such person under this Act;
- (m) “rules” mean the rules made under this Act;
- (n) “sexual offence” means an offence under sections 366-A, 367-A, 376 or 377 of the Pakistan Penal Code, 1860 (XLV of 1860), or under the West Pakistan Suppression of Prostitution Ordinance, 1961 (II of 1961);
- (o) “terrorism case” means a criminal case, pending in a Court, pertaining to offence of terrorism;
- (p) “Unit” means the Witness Protection Unit, established under section 5 of this Act; and
- (q) “witness” means a person who may testify under Article 3 of the Qanun-e-Shahadat Order, 1984 (P.O. No. X of 1984) and includes victim and such other person, connected in relation to an investigation, prosecution and trial of criminal proceedings, as specified in this Act, except accused.

3. Witness Protection Board.---Government shall establish a Board to be known as the Khyber Pakhtunkhwa Witness Protection Board, consisting of the following:

- (a) Secretary to Government of Khyber Pakhtunkhwa Home and Tribal Affairs Department;

- (b) Secretary to Government of Khyber Member
Pakhtunkhwa Finance Department;
- (c) Provincial Police Officer, Khyber Member
Pakhtunkhwa;
- (d) Director General Prosecution, Khyber Member
Pakhtunkhwa;
- (e) Additional Inspector General of Special Member
Branch, Khyber Pakhtunkhwa;
- (f) Deputy Inspector General, Counter Terrorism Member
Department, Khyber Pakhtunkhwa; and
- (g) Deputy Secretary (Judicial), Home and Tribal Member-
Affairs Department. cum-
Secretary.

4. Functions of the Board.---The Board shall-

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

5. Witness Protection Unit.---(1) Government shall establish the following
Witness Protection Units:

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

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

(3) A Unit shall work under the general supervision and control of the
Board in the performance and discharge of its functions effectively and
meaningfully and to achieve the objectives of this Act.

6. Protected person.---(1) Subject to sub-section (2), a witness or any other person connected with the criminal proceedings and person closely related to the aforesaid person, may apply for the protection under this Act.

(2) The Provincial Police Officer, the Director General, Prosecution or the Court trying an offence of terrorism or a heinous offence may, through Home and Tribal Affairs Department of Government, direct a concerned Unit for assessing the risk or continued risk to any person concerned directly or indirectly with such criminal proceedings.

(3) The Unit shall consider the following matters in determining the risk factor:

- (a) the risk profile of the person involved;
- (b) the nature and gravity of the threat to such person; and
- (c) the measures required to minimize, reduce or evade the risk at the smallest or lowest possible cost.

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

- (a) the provision of close protection service;
- (b) to lodge in a safe house;
- (c) to relocate temporarily for an extended period to a safe place;
- (d) interim change in identity;
- (e) concealing identity of persons involved in a criminal proceedings;
- (f) to provide financial assistance to a protected person, unable to undertake regular employment or in the time of restriction in his freedom of movement, as a result of such protection given to him.

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

(3) Government may, directly or in consultation with the concerned Unit, revoke or modify the non-Court protection measures taken by that Unit.

(4) The expenses for the measures, under sub-section (1), shall be borne by Government.

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

8. Assistance to witnesses.---(1) A witness, other than an accused, is eligible for assistance in connection with his testimony before a Court in terrorism case or a heinous offence, when-

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

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

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

9. Special measures.---(1) The Unit or, as the case may be, the Court shall take special measures mentioned in sections 10 to 15 of this Act.

(2) If the Court is satisfied, on an application by a party to the criminal proceedings or on its own motion, that a witness needs assistance under section 8 of this Act, it may, by order, direct to take such special measures as are mentioned in the order, but before making an order, the Court shall afford an opportunity of hearing to the person likely to be affected by such order.

(3) The special measures, unless otherwise directed, shall have effect from the day the order is made and until the proceedings reach to a conclusion or for such period as the Court may determine or direct.

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

10. Witness screening.---The Court may direct that a special measure be taken to prevent the witness from being seen while coming or entering to the Court to give evidence or while leaving the Court in a manner that he continues to see or be seen by the Court, the public prosecutor, the legal representatives, acting in the criminal proceedings or any other person appointed by the Court for that purpose.

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

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

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

- (a) able to see and hear a person and to be seen and heard by the persons specified in section 10; and
- (b) able to be heard by the accused and the public unless the Court directs otherwise.

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

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

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

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

14. Prohibition of reporting.---(1) The reporting of the identity of a person, connected with an offence of terrorism or a sexual offence or the identity of the members of his family, shall be prohibited in print, electronic or other media.

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

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

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

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

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

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

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

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

(d) whether the witness has a tendency or any motive to be dishonest.

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

(6) The violation of a witness anonymity order or any provision thereof shall be an offence, punishable under This Act.

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

17. Punishment.--- Any person, who contravenes the provisions of section 14 or section 15 of this Act, shall be punishable with imprisonment for a term which may extend to three years but shall not be less than thirty days and with fine which may extend to rupees five million but shall not be less than rupees one hundred thousand.

18. Power to make rules.--- Government may, by notification in the official Gazette, make rules to carry out the purposes of this Act.