

WITNESS PROTECTION LAWS IN PAKISTAN---

AN OVERVIEW

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INTRODUCTION

Crime is a social phenomenon and response to it constitutes the very criminal justice system. In Pakistan, the response to crime in a systemic manner suffers from many a problem. One of the weaknesses, as noted by the experts, is the protection of witnesses, who in turn feed into the testimonial evidence relied by the courts for adjudication. For long, there has been discussion on protecting the witnesses. The instant write-up will examine the latest legislation introduced in this regard in an analytical manner. The legislation related to the protection of witnesses has been introduced at both the federal as well as the provincial level. To appraise the legislation in an organized manner, the issues have been discussed thematically:

a. CONSTITUTIONALITY OF THE CRIMINAL LAW

After doing away with the Concurrent List of the legislative subjects common between the Federation and the Provinces through the eighteenth constitutional amendment in 2010, a new concurrent legislative domain to the extent of the 'criminal law, criminal procedure and evidence' was introduced to the Constitution through its Articles 142 and 143. Conjointly read, the two constitutional provisions prefer federal laws over the provincial laws. The practice of legislation on the subject, however, is far from what was intended. The gap between the impact of Article 143 of the Constitution and the dictates of the provincial autonomy needs an authoritative constitutional adjudication to neatly draw the line between the Federation and the Provinces in the areas of the 'criminal law, the criminal procedure and the evidence'. At the moment, by the end of 2017, the federal legislature as well as the provincial legislatures have legislated on the subject of witness protection. The two sets of the legislation need to be squared with each other constitutionally by clearly identifying their genus of legislative domain, and the legal consequences of the category so identified. This is important as it will ensure internalization of the legislations into larger criminal justice legal framework applicable to Pakistan.

b. FEDERAL LAW

The federal law on witness protection was enacted on 7th June, 2017. The legislation is styled as the Witness Protection, Security and Benefit, Act, 2017. The law is not applicable to the provinces. It is primarily designed for the Islamabad Capital Territory. It uses an inclusive definition of a 'witness' and includes persons associated with him as well. Similarly, the protection is extended to all types of criminal proceedings like investigations, inquires and trial. In a world of limited resources, the wide definitions are likely to either compromise the implementation of the law by putting it to disuse, or it might expose public servants to unnecessary criminal prosecution. The only apparent limit on the entry into the programme is the category of the 'serious offences', which in ultimate analysis, are as wide in effect as other definitions. The law offers six types of protections to a 'witness', which are:

- (1) establishing, concealing and distancing of identity of a witness by different ways;

- (2) relocating the witness;
- (3) provision of accommodation for the witness;
- (4) provision of reasonable financial assistance;
- (5) compensating the legal heirs of a 'protected witness';
- (6) provision of special security arrangements for the witness.

The programme is to be managed by a Witness Protection Advisory Board (WPAB), which is to be facilitated by a Witness Protection Unit (WPU) in the relevant ministry. The bureaucratic statutory bodies have, under the law, all the authority, but the responsibility is with the police. It may be noted that the law is not likely to be implemented soon as it is too wide to be implemented and too expensive to sustain. More so as no dedicated funds have been earmarked for the programme.

c. PROVINCIAL LAWS

(i) PUNJAB

While the government of the Punjab is preparing its own provincial witness protection law, on 16th November, 2015, it promulgated rules under section 21 of the Anti-Terrorism Act, 1997. The approach was different from other provinces that chose to promulgate dedicated provincial legislation. The promulgated statutory rules were cited as the Punjab Protection of Vulnerable Persons Rules, 2015. The rules envision a statutory Punjab Protection of Vulnerable Persons Board (PPVPB), which has been supplemented by a Protection Unit (PU), much in the same way as proposed in the later promulgated federal law. Unlike the PU, which is to follow guidelines before passing a protection order, the courts have not been given any statutory guidelines to assess cases qualifying for protection within the scope of the anti-terrorism legislation. The protections offered in the programme are same as in the federal law with one addition of power to seal the record of the witness. Unlike the federal law, the rules provide for a temporal protection of maximum six months at a time. Termination of protection programme has also been punctuated in the rules. The rules mandate the government to establish high security prisons and to establish safe houses for lodging of the protected persons. The rules will be administered through the Counter Terrorism Department of the Punjab Police and by the Home Department of the Government of the Punjab. In absence of dedicated resources, the implementation is not likely to be adequate.

(ii) SINDH

Sindh was the first province to introduce the legislation on the subject. Sindh Witness Protection Act, 2013 was passed on 1st November, 2013. The law employs wide definitions of the concepts of 'witness' and 'serious offences': resulting in generalization of the scope of the law. The protections offered by the law to a witness are comprehensive and at par with the federal law. The programme for witness protection shall be overseen by the Witness Protection Advisory Board (WPAB), which is then assisted by a Witness Protection Unit (WPU). The Additional Inspector General of Police, Central Intelligence

Department (CID) has been declared as head of the WPU. Through a written agreement, the protection is offered to a witness. There is a legal provision enabling a court to pass the order directing therein the concealment of identity of a witness. The law provides for the grounds triggering the termination of the protection agreement. The order of protection by the WPU is reviewable on an application by the aggrieved person. The law criminalizes acts aimed to frustrating the protection of a protected witness. While introducing an independent law on the subject, the police have not been absolved from their duties to the extent of witness protection.

(iii) BALOCHISTAN

The Balochistan Witness Protection Act, 2016 was promulgated on 26th March, 2016. It provides a legal framework for the protection of witnesses in the province. The law provides a very general definition of a 'witness'. The protections afforded by the law are similar to the witness protection regime introduced at federal level; the law extends protection to families of the witnesses as well. As in the Punjab and at the federal level, the programme is to work under the oversight of a Witness Protection Advisory Board (WPAB), which will be assisted by a Protection Unit (PU) for implementation. The Secretary, Home and Tribal Affairs Department of the Government of the Balochistan shall act as Chief Witness Protection Officer (CWPO). The CWPO shall further appoint a Deputy Director for Witness Protection who shall act on his behalf. The PU will further establish a Committee to assist the PU in implementation. The IGP Balochistan, who is considered to be the head of the police administration in the province and is expected globally to be vested with the power to protect the witnesses has been included as the member of the committee. Another provision of the law allows appointment of Witness Protection Officers (WPOs). The protection will be extended to a witness, according to the law, on the basis of a Protection Agreement. The courts have also been empowered to pass a Witness Protection Order, which will be appealable to the High Court. The witness protection shall not be forever; however, the procedure of termination is not easy as it involves subjective tests. The witness protection can be reviewed on application of an aggrieved person to the CWPO. The law provides a list of cases deemed as serious offences, in which, the witnesses are entitled to witness protection. The serious offences list is very wide. An added feature of the Balochistan legal regime is that it criminalizes the acts endangering protected witnesses. Interestingly, towards the end, the powers of police officers to protect witnesses have been kept intact; the dual responsibility model of the witness protection is less likely to yield effective implementation.

(iv) KHYBER PAKHTUNKHWA

Like the Punjab, the Khyber Pakhtunkhwa has not introduced a dedicated provincial legislation on the subject. It, therefore, utilizes section 21 of the Anti-Terrorism Act, 1997 as the applicable legal regime for witness protection.

d. REGIONAL LAWS

At the regional level, Sri Lanka introduced the Assistance to and Protection of Victims of Crime and Witnesses Act, 2015 to deal with witness protection. As far as India is concerned, it did not introduce witness protection legislation; however, a Witness Protection Bill was moved in 2015. Poring on the Sri Lankan law evinces that the law is designed to protect the victims as well as witnesses in criminal cases. The law establishes a National Authority for the Protection of Victims of Crime and Witnesses, which will work through its Board of Management. The Authority has only policy role, and the actual processing of the cases is to be carried out by a Division within the Police Department; the Division is styled as the Victims of Crime and Witnesses Assistance and Protection Division. Aside the victims of crime protections, the law provides six protections to a witness akin to the protections afforded in Pakistan's federal law on the subject. The law of Sri Lanka was promulgated in peculiar circumstances, therefore, must be contextualized accordingly. On the other hand, the Indian Bill on the witness protection is designed differently and provides a narrow definition of a 'witness'. Unlike Pakistan and Sri Lanka, the process of witness protection is designed in and around judicial authority. The Indian law establishes a National Witness Protection Council comprising a retired judge of the Supreme Court as its Chairperson, independent members and representatives of police. The Council is mandated to steer the policy and implementation of the law. At state (province) level, the State Witness Protection Councils have been established with similar but state-equivalent composition.

e. INTERNATIONAL LAW

The international law related to witness protection is based on treaty law. In 2000, the United Nations Convention Against Transnational Organized Crime (the Convention) was adopted by the UN General Assembly; UNTOC came into force in 2003. Pakistan ratified the Convention in 2010. While the Convention deals with transnational organized crimes only, its Article 24 legally obliges the states to take measures from potential retaliation or intimidation for witnesses in criminal proceedings. Based on the obligation, the United Nations Office on Drugs and Crime (UNODC) collated good practices in a publication styled as Good Practices for the Protection of Witnesses in Criminal Proceedings involving Organized Crime. The publication discusses two key elements of the witness protection legal regime: (1) witnesses, which have then been divided into three categories of justice-collaborators, victim witnesses and others (like expert witnesses); and (2) crime (terrorism, organized crime, money laundering, human traffic etc. Importing the information from international law into the national legal regimes in Pakistan would have been useful in clearly narrowing down the categories of witnesses to be protected in special kinds of crimes; broadly defined categories of witnesses and crimes will likely affect the prowess of implementation.

f. ISLAMIC LAW

Mr. Tareq Saeed Al-Shammari, a student of the University of East Anglia, in his PhD thesis on comparative study of witness protection in the UK and the KSA, has stated that Article 169 of the Law of Criminal Procedure, 2001 of the KSA provides for witness protection by stating that Article 169 of the LCP stipulates that the Court shall protect the witnesses against any attempted intimidation or confusion during the testimony. On jurisprudential plane, he traces the legal basis

of witness protection into the doctrine of Maslaha developed by Al-Ghazali. He translates the Maslaha as public interest and compares it with doctrine of public interest in the English Law.

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