



महाराष्ट्र शासन राजपत्र

असाधारण भाग आठ

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असाधारण क्रमांक १२४

प्राधिकृत प्रकाशन

महाराष्ट्र विधानमंडळाचे अधिनियम व राज्यपालांनी प्रख्यापित केलेले अध्यादेश व केलेले विनियम आणि विधि व न्याय विभागाकडून आलेली विधेयके (इंग्रजी अनुवाद).

In pursuance of clause (3) of article 348 of the Constitution of India, the following translation in English of the Maharashtra Witness Protection and Security Bill, 2017 (L. A. Bill No. LVII of 2017), introduced in the Maharashtra Legislative Assembly on the 10th August 2017, is hereby published under the authority of the Governor.

By order and in the name of the Governor of Maharashtra,

N. J. JAMADAR,
Principal Secretary and R.L.A. to Government,
Law and Judiciary Department.

L. A. BILL No. LVII OF 2017.

A BILL

to provide protection to the witnesses in criminal trials, their relatives in relation to serious offences and for matters connected therewith or incidental thereto.

WHEREAS, it is expedient to provide protection to the witnesses in criminal trials, their relatives in relation to serious offences and for matters connected therewith or incidental thereto; it is hereby enacted in the Sixty-eighth Year of the Republic of India as follows :—

1. (1) This Act may be called the Maharashtra Witness Protection and Security Act, 2017.

Short title,
extent and
commencement.

(2) It extends to the whole of the State of Maharashtra.

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

Definitions.

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

(a) “Committee” or “District Committee” means the District Witness Protection Committee and it includes Committee for Metropolitan Area and for the Commissionerate Area (other than Metropolitan Area) constituted under section 3 ;

(b) “criminal trial ” means the trial for serious offences ;

(c) “serious offences” means those offences which are punishable with death or imprisonment for life or imprisonment for more than seven years;

(d) “State Committee” means the State Witness Protection Committee constituted under section 3;

(e) “witness” includes victim and his near relatives under threat in trial for serious offences.

Constitution
of
Committees.

3. (1) The State Government may, by an order, constitute the following Committees for the purposes of the Act, namely :—

(a) the State Witness Protection Committee;

(b) the District Witness Protection Committee for every District.

(2) The State Committee shall be headed by the Commissioner of Intelligence and comprise of such other officers, as may be prescribed.

(3) The District Committee,—

(a) in the Metropolitan Area within the meaning of clause (k) of section 2 of the Code of Criminal Procedure, 1973, shall be headed by the Commissioner of Police and comprise of two such other officers, as may be prescribed ; 2 of 1974.

(b) in the Commissionerate Area (other than Metropolitan Area), shall be headed by the Commissioner of Police and comprise of two such other officers, as may be prescribed ;

(c) in the areas not covered by clause (a) or (b), shall be headed by the District Magistrate and comprise of two such other officers, as may be prescribed.

Powers and
functions of
State
Committee.

4. The State Committee shall exercise the following powers and perform the following functions, namely :—

(a) to monitor the protection provided to the witnesses under the Act;

(b) to give necessary directions to District Committees and the police stations for protection to the witnesses;

(c) any other powers and functions as may be prescribed.

Powers and
functions of
District
Committees.

5. The District Committee shall exercise the following powers and perform the following functions, namely :—

(a) to monitor the protection provided to the witnesses in the area of jurisdiction of the Committee;

(b) to take decision to whom the protection should be given and the extent and the nature of such protection ;

(c) to take action on the application received for protection of witnesses;

(d) to give necessary directions to the concerned police station for protection of witnesses;

(e) to take necessary steps on orders received from State Committee;

(f) to take decision for withdrawal of protection;

(g) to provide necessary information to the Government and State Committee regarding protection of witnesses;

(h) to maintain the record of witnesses to whom protection has been given or withdrawn;

(i) any other powers and functions as may be prescribed.

6. In serious offences, the protection may be provided by the Committee to the witnesses if,— Protection to witnesses.

(a) the application is made by the witness or his relatives;

(b) the application is made by the Public Prosecutor or Additional Public Prosecutor in the trial;

(c) the investigating officer of the crime or any police officer in connection with the investigation is satisfied that, it is necessary to provide protection;

(d) the directions are so issued by the State Committee;

(e) the directions are so issued by the State Government;

(f) the directions are so issued by the Court.

7. (1) (a) If the witnesses in the criminal trial received threat to their lives, they may, make an application to the concerned District Committee for protection, stating therein the nature of threat to their lives and from whom it is received. Procedure for providing protection to witnesses.

(b) In case of any complaint made in any police station by any witness under the Act, the same shall be forwarded by the police officer immediately to the concerned District Committee for necessary action.

(2) In case of minor witness, the parent or guardian may make an application to the concerned District Committee for protection of that minor witness.

(3) The Committee shall upon receipt of an application or *suo moto*, without any delay take necessary action for providing protection to witnesses. The Committee may forthwith call a report regarding threat perception from an officer not below the rank of Assistant Commissioner of Police or Deputy Superintendent of Police of the District, as the case may be.

(4) The Committee may, depending upon the degree of threat perception, take decision to provide interim protection to the witnesses, in a criminal trial, till the receipt of the report.

(5) Upon the receipt of the report, the Committee shall make detailed enquiry about the threat perception and may direct the Assistant Commissioner of Police or Deputy Superintendent of Police, as the case may be, to provide protection to the person whose life is in danger, if the protection is not provided.

(6) The Committee may provide the protection to the witnesses for short duration and if the threat perception continues, the Committee may extend the period, from time to time, till the Committee thinks fit.

(7) The decision of the Committee for providing protection shall be final.

(8) The nature and duration of the protection shall be as decided by the Committee.

Protection of witnesses during investigation.

8. The police officer, who is investigating the crime is satisfied that the life of the person who has lodged a report in the police station or informant of the offence, or who is witness to the acts which constitute an offence, is in danger, may with approval of the concerned Committee, provide the protection to such person and it shall continue till the completion of the investigation.

Protection during trial.

9. During the trial, upon the application made by a witness or by the Public Prosecutor or Additional Public Prosecutor of the case, if the Court on its own motion is satisfied that, the lives of the witnesses in the case are in danger may, direct the District Committee to provide protection to the witnesses.

Factors to be considered for protection to witnesses.

10. The concerned Committee shall consider the following factors while giving protection to the witnesses,—

- (a) the nature of the case ;
- (b) importance of witnesses in the case ;
- (c) the degree of perception of threat to witnesses ;
- (d) previous record of the witnesses ;
- (e) any other factors as may be prescribed.

Non-disclosure of name of witnesses during investigation.

11. The investigating officer or any police officer connected with the investigation of crime or any person who has received the information regarding the names and addresses of the witnesses, shall not disclose such information of witnesses to whom protection has been provided, till the disposal of the case.

Measures that may be taken by Court.

12. Subject to the provisions of the Code of Criminal Procedure, 1973 and the Indian Evidence Act, 1872, if the Court is satisfied that, it is necessary in the interest of protection of the witness, the Court may take the following measures,—

- (a) holding the proceedings of the case at the place and the time to be decided by the Court;
- (b) recording of evidence of the protected witnesses *via* video-link or by any other mode;
- (c) avoiding to mention the names and addresses of the witnesses in its orders and judgments or in any other record of a case accessible to public;
- (d) the case in which the protection to the witnesses is granted or extended, the Court may order that all or any proceeding pending before such Court, shall not be published or telecast in any manner.

13. (1) The investigating officer or any police officer or any person who has a knowledge that the witnesses are being physically protected, contravenes the provision of section 11, shall be punished with imprisonment for a term which may extend to three years or fine which may extend to five thousand rupees, or with both. Offences.

(2) Any person who contravenes any order or direction issued by the Court under section 12, shall be punished with imprisonment for a term which may extend to three years or fine which may extend to five thousand rupees, or with both.

14. The offences punishable under section 13 shall be cognizable and triable by the Court of Judicial Magistrate First Class or the Metropolitan Magistrate within whose local jurisdiction, the offences are committed. Cognizance of offences.

15. The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law, for the time being in force. Act in addition to other laws and not in derogation.

16. No suit, prosecution or other legal proceeding shall lie against the Government, or any officer or employee of the Government, for anything done or purported to have been done in good faith, in pursuance of the provisions of this Act or the rules made thereunder. Protection of action taken in good faith.

17. The State Government may, from time to time, issue directions to the Committees constituted under the Act, as may appear to it to be necessary for carrying out the purposes of the Act or of any rules made thereunder. Power to issue directions.

18. (1) The State Government may, by notification in the *Official Gazette*, make rules to carry out the purposes of this Act. Power to make rules.

(2) Every rule made under this Act shall be laid, as soon as may be, after it is made, before each House of the State Legislature, while it is in session for a total period of thirty days, which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in rule or both Houses agree that the rule should not be made, and notify their decision to that effect in the *Official Gazette*, the rule shall from the date of publication of such decision in the *Official Gazette*, have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done or omitted to be done under that rule.

19. (1) If any difficulty arises in giving effect to the provisions of this Act, the Government may, as occasion arises, by an order, published in the *Official Gazette*, do anything, not inconsistent with the provisions of this Act, which appears to it to be necessary or expedient for the purposes of removing the difficulty : Power to remove difficulties.

Provided that, no such order shall be made after the expiry of a period of two years from the date of commencement of this Act.

(2) Every order made under sub-section (1) shall be laid, as soon as may be, after it is made, before each House of the State Legislature.

STATEMENT OF OBJECTS AND REASONS.

The Supreme Court of India has recently considered the question to offer protection to witness in NHRC *v/s.* State of Gujarat : 2003 (9) SCALE 329, PUCL *v/s.* Union of India : 2003 (10) SCALE 967, Zahira *v/s.* State of Gujarat: 2004 (4) SCC 158, Sakshi *v/s.* Union of India: 2004 (4) SCC 158, Sakshi *v/s.* Union of India: 2004 (6) SCALE 15 and Zahira *v/s.* Gujarat 2006 (3) SCALE 104. In Sakshi case the Supreme Court emphasized the need for legislation to give protection to witnesses. In the light of the Supreme Court Judgments, the Law Commission of India took up the subject *suo motu* and has submitted a well-studied 198th report which deals with this aspect in detail and has given certain recommendations.

2. Under the United Nations Convention against transnational organized crime and the protocols thereto, in Article 24 thereof, it has been laid down that each State party shall take appropriate measures within its means to provide effective protection from potential retaliation or intimidation for witnesses in criminal proceedings who give testimony concerning offences covered by the said convention. A number of nations have enacted their Witness Protection Acts.

3. Right to fair trial is an integral part of article 21 of our Constitution of India which guarantees right to life. Right to fair trial is not only the fundamental rights of the accused alone but it is also the fundamental right of the complainant as well as the society, because conviction of guilty is always in the interest of peaceful life of the society. In the recent past, the nature of crime has changed rapidly. It is no more confined to the locality around the accused person but many times such crimes are against humanity and global safety. The role of witnesses in co-operating with the law enforcement and investigating agencies and giving evidence in Court proceedings about commission of offence is an integral part of the rule of law. Thus, the witnesses are playing a major role in the administration of justice. It is, therefore, necessary to give confidence to the witnesses so that they will come forward to give a helping hand to the law enforcement and judicial authorities. It is, therefore, considered expedient to enact a law for the said purpose.

4. The salient features of the proposed Bill are as under,—

(a) provision relating to constitution of the State Witnesses Protection Committee, District Witnesses Protection Committee for every District, Metropolitan Area Witnesses Protection Committee in Metropolitan areas and in the Commissionerate Area (other than Metropolitan Area) Witness Protection Committee ;

(b) provisions regarding powers and functions of the said Committees;

(c) provisions for protection to witnesses in serious offences;

(d) provisions regarding protection during investigation and trial;

(e) to ensure safety of witnesses, the provisions relating to non-disclosure of information of witnesses during investigation;

(f) punishment for violation of provisions of the Act.

5. The Bill is intended to achieve the above objectives.

Mumbai,

Dated the 8th August, 2017.

DEVENDRA FADNAVIS,

Chief Minister.

MEMORANDUM REGARDING DELEGATED LEGISLATION.

The Bill involves the following proposals for delegation of legislative power, namely:—

Clause 1(3).— Under this clause, power is taken to the State Government, to bring into force the provisions of the Act by notification in the *Official Gazette*.

Clause 3.— (a) Under sub-clause (2), power is taken to the State Government, to prescribe by rules the appointment of officers on the State Committee;

(b) under sub-clause (3), power is taken to the State Government, to prescribe by rules the appointment of officers on District Committee.

Clause 4 (c).— Under this clause, power is taken to the State Government, to prescribe by rules, the power and functions to be exercised and performed by the State Committee.

Clause 5 (i).— Under this clause, power is taken to the State Government, to prescribe by rules, the power and functions to be exercised and performed by the District Committee.

Clause 10(e).— Under this clause, power is taken to the State Government, to prescribe by rules, the factors to be considered by the District Committee while giving protection to the witnesses.

Clause 18(1).— Under this clause, power is taken to the State Government, to make rules, by notification in the *Official Gazette*, to carry out the purposes of the Act.

Clause 19.— Under this clause, the power is taken to the State Government, to remove, by an order published in the *Official Gazette*, any difficulty which may arise in giving effect to the provisions of this Act.

2. The above-mentioned proposals for delegation of legislative power are of normal character.

FINANCIAL MEMORANDUM

Clause 8 of the Bill provides for protection of witnesses during investigation, clause 9 provides for protection of witnesses during trial. This would require certain recurring and non-recurring expenditure to be met out of the Consolidated Fund of the State. However, it is not possible at this stage to give an estimate of actual expenditure that may have to be incurred in this behalf, as the same will depend upon the number of cases wherein protection and security to the witnesses is to be granted. Such expenditure will have to be incurred from the Consolidated Fund of the State.