

SINDH ACT NO. LI OF 2013
THE SINDH WITNESS PROTECTION ACT, 2013

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[1st November, 2013]

An Act to provide for protection of witnesses to enable them to give evidence in criminal proceedings in the Province of Sindh.

WHEREAS it is expedient to provide for protection of witnesses to enable them to give evidence in criminal proceedings in the Province of Sindh and for matters ancillary thereto;

It is hereby enacted as follows:-

1. (1) This Act may be called the Sindh Witness Protection Act, 2013.

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

(3) It shall come into force at once.

2. In this Act, unless there is anything repugnant in the subject or context —

(a) "Board" means the Witness Protection Board constituted under section 5;

(b) "criminal proceedings" includes any criminal trial or inquiry before a court or tribunal having criminal jurisdiction, an inquest or inquiry into death and a police investigation under the Code of Criminal Procedure, 1898, and any investigation by any other authority under any law;

(c) "Government" means the Government of Sindh;

(d) "law enforcement agency" includes a body or agency responsible for the enforcement of laws relating to the prevention, detection and investigation of any offence;

(e) "prescribed" means prescribed by rules;

(f) "Programme" means the Witness Protection Programme established under this Act.

(g) "protected person" means any person who has been placed under protection for the purposes of this Act;

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(h) "protection" means the protection to a witness provided in terms of this Act and_ includes reallocation or change of identity of, or other related assistance or services provided to, or protected persons, as may be prescribed;

(i) "related person" means any member of the family or household of the witness, or any other person in a close relationship to, or association with, such witness.

(j) "rules" means the rules made under this Act;

(k) "Schedule" means the Schedule to this Act;

(l) "serious offence" means an offence against a provision of -

(i) any law in force in the Province of Sindh, for which the maximum penalty is death, or imprisonment for a period of not less than twelve months;

(ii) offences under Pakistan Penal Code, 1860; and

(iii) | offences as specified in the Schedule;

(m) "Unit" means the Witness Protection Unit established under this Act;

(n) "witness" means a person who —

(i) 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;

(ii) because of his or her relationship to or association with a person referred to in clause (i), may require protection or other assistance under this Act; or

(iii) G@ person in possession of, or provided any important information, statement — or assistance to a public officer and has agreed to share the information with law enforcement agency and has agreed to give evidence on behalf of the State;

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(iv) for any other reason, may require protection or other assistance under this Act;

(o) "threatened witness" means any witness in respect of whom, there is likelihood of danger to the safety of his or her life or life of his or her close relatives; or serious danger to his or her property or property of his or her close relatives, by reason of his or her being a witness.

3. (1) The provisions of this Act shall be applicable to the investigation, inquiry and trial of serious offences.

(2) In case of any inconsistency, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any provision of the Code of Criminal Procedure, 1898, or in any provision of any other law for the time being in force.

4. (1) As soon as after the commencement of this Act, Government shall establish a Witness Protection Programme for protection and safety of a witness in any proceedings relating to this Act.

(2) The actions in the Programme may include the following:-

(a) making arrangements necessary —

(i) to allow the witness to establish a new identity;

(ii) to allow the witness to conceal his or her identity by wearing a mask, changing his or her voice, appearance or any other form of segregation during the investigation or trial, or examination under the law;

(iii) to allow video conferencing in order to secure the protected person; provided that such arrangements are approved by the concerned authority under this Act;

(iv) to protect the witness otherwise; or

(b) relocating the witness;

(c) providing accommodation for the witness;

(d) providing transport for the property of the witness;

(e) providing reasonable financial assistance to the

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witness, whenever practicable, for obtaining a means of livelihood;

(f) providing compensation to the legal heirs, if the protected person is killed due to his participation in the Programme, in case of death or permanent incapacity of the protected person during his protection, providing free education to his or her dependent minors;

(g) making special arrangements for security of witness for reasonable period of time.

(h) the above mentioned protection and facilities will also be provided to the family members of the witness if he or she demanded.

5. (1) Government shall establish a Board to be known as the Witness Protection Advisory Board, which shall consist of -

(i) the Secretary, Home Department, Government of Sindh, who shall be its Chairman;

(ii) the Secretary, Law Department, Government of Sindh;

(iii) the Secretary Finance, Government of Sindh;

(iv) the Advocate General Sindh;

(v) the Inspector General of Police, Sindh;

(vi) the Inspector General of Prisons, Sindh;

vii) the Prosecutor General, Sindh

(viii) the representative of the Provincial Commission on Human Rights;

(ix) the Additional Inspector General, CID, Sindh.

(2) The Additional Inspector General, CID shall also act as Secretary of the Board.

(3) The Board shall advise the Unit generally on the exercise of its powers and performance of its functions under this Act and shall, in particular and without prejudice to the generality of the foregoing shall -

(a) advise on the formulation of witness protection

policies in accordance with the current law and international best practices;

(b) oversight the administration of the Unit:

(c) approve the budgetary estimates of the Unit:
and

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(d) exercise such other powers and perform such other functions as may be conferred by or under this Act or assigned to it by Government.

6. (1) A Unit to be called as the Witness Protection Unit, to facilitate the Programme shall be established in the Home Department, Government of Sindh.

(2) Government may, by notification in the official Gazette -

(a) establish a branch office of the Unit in any defined area for the purposes of the administration of this Act; or

(6) abolish any branch office or incorporate it with any other such office, and may for this purpose make any administrative or other arrangements as deemed necessary;

7.(1) The Unit shall be headed by the Additional Inspector General of Police, CID Sindh, who shall be the Chief Witness Protection Officer.

(2) The Chief Witness Protection Officer shall exercise such powers, perform such functions and carry out such duties as may be conferred upon, assigned to or imposed upon him or her by or under this Act, subject to the control and directions of Government.

(3) The Chief Witness Protection Officer may, subject to the laws governing the public service, appoint on secondment or deputation a person as Deputy Director for Witness Protection Unit who shall, subject to the control and directions of the Chief Witness Protection Officer, exercise, perform or carry out any powers, functions and duties conferred upon, assigned to or imposed upon him by the Chief Witness Protection Officer.

(4) The Chief Witness Protection Officer shall be assisted, subject to his control and directions, by -

(i) officers of the Home Department designated for that purpose by Government;

(ii) witness protection officers;

(iii) Police force or members of the Police force;

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(iv) officers of any other Department of Government, or in the service of Government seconded to the service of the Unit, for a particular service, in terms of the Sindh Civil Servants Act, 1973;

(v) or any person or officer or public servant designated or appointed by Government, subject to the provisions of this Act regarding administration of the Programme.

8. The Unit shall provide the framework and procedure for giving protection on behalf of the State to persons in possession of important information who are facing potential risk, threat or intimidation due to giving evidence on behalf of the State.

9. There shall be established a committee of following officers to assist the Unit for making recommendations in terms of placing a witness under protection:-

(i) Officer representative of Home Department, Government of Sindh;

(ii) Additional IGP Special Branch;

(iii) DIGP Headquarter;

(iv) DIGP of the concerned Range (where the case is registered).

10. (1) The Chief Witness Officer -

(i) shall be responsible for the protection of witnesses and related persons, including temporary protection, and related services in accordance with the provisions of this Act;

(ii) may make an arrangement with any Department of Government or enter into an agreement with any person, body, institution or organization —

(a) in terms of which the Unit shall be authorized to make use of the facilities or equipment belonging to or under the control of such department, person, body, institution or organization;

(b) in order to obtain documents and other information that may be required for the protection of a protected person; or

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(c) regarding any matter for the purpose of giving effect to the provisions of this Act;

(iii) may designate place or places to be used or utilized as place or places of safety;

(iv) shall exercise control over witness protection officers and security officers; and

(v) may exercise powers and shall perform functions or carry out the duties conferred upon, assigned to or imposed upon him or her by or under this Act.

(2) (a) The Chief Witness Protection Officer may either in general or in a particular case or in cases of a particular nature, in writing delegate any power, function or duty conferred upon, assigned to or imposed upon him or her by the Board under this Act to any other member of the Unit.

(6) The Chief Witness Protection Officer may, at any time in writing, withdraw such delegation, and that the delegation of any power, function or duty under sub-section 2(a) above, shall not prevent the Chief Witness Protection Officer from exercising, performing or carrying out such power, function or duty himself.

(3) All Departments of Government shall render such assistance as may be reasonably required in the exercise, performance or carrying out of the powers, functions and duties conferred upon, assigned to or imposed upon the Chief Witness Protection Officer by or under this Act.

11. (1) Government may, subject to the laws governing the public service, appoint a reasonable number of witness protection officers.

(2) The Witness Protection Officers shall in the exercise of powers, performance of functions and carrying out duties conferred upon, assigned or imposed upon them by the Chief Witness Protection Officer, assist the Chief Witness Protection Officer.

12. The functions of the Unit shall be to -

(a) establish and maintain the Programme;

(6) determine the criteria for admission to and removal from the Programme;

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(c) determine the type of protection measures to be applied;

(d) advise any Government department, agency, body or any other person on the adoption of strategies and measures on witness protection; and

(e) perform such other functions as may be necessary for carrying out the purposes of this Act, or any other functions as may be assigned to it by Government.

13. The Unit shall have powers to -

(a) control and supervise its staff in a manner as may be necessary for the promotion of the purpose and the object for which the Unit is established;

(6) administer the funds and assets of the Unit;

(c) collect, analyze, store and_ disseminate information related to witness protection;

(d) give such instructions to a protected person as the Agency may consider necessary;

(e) summon a public officer or other person to appear before it or to produce a document or thing or information which may be considered relevant to the functions of the Unit within a specified period of time and in such manner as it may specify.

14. (1) The Chief Witness Protection Officer shall be responsible to decide for inclusion of a witness in the Programme, and shall give due regard to the report and recommendations of the committee specified in section 9 and the witness protection officer concerned, in terms of the following:-

(a) the seriousness of the offence to which the statement or evidence of the witness relates;

(6) the nature and importance of that statement or evidence;

(c) the nature of the perceived danger to the witness;

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the Unit.

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(d) the nature of the witness's relationship to any other witness being assessed for inclusion in the Programme;

(e) any danger that the interest of the community might be affected, if the witness or any related person is not placed under protection;

(f) the nature of the proceeding in which the witness has given evidence or is or may be required to give evidence, as the case may be;

(g) the probability that the witness or any related person will be able to adjust to protection, having regard to the personal characteristics, circumstances and family or — other relationship of the witness or related person;

(h) the cost likely to be involved in the protection of the witness or any related person;

(i) the results of any psychological or psychiatric examination or evaluation of the witness conducted to determine his or her suitability for inclusion in the programme;

(j) whether there are viable alternative methods of protecting the witness; and

(k) whether the witness has a criminal record, particularly in respect of violent crime, which indicates a risk to the public if he or she is included in the programme;

(l) any other factor that the head of the Unit deems relevant.

(3) A witness shall not be included in the Programme unless the witness, or a person legally responsible for the person, agrees in writing to be included in the Programme.

15. (1) Subject to sub-section (2), the Chief Witness Protection Officer, before placing any witness or related person under protection, shall -

(a) enter into a written protection agreement with such witness; and

(6) where applicable, enter into a separate

written protection agreement with each related person, setting out the obligations of the Chief Witness Protection Officer and the witness or related person in respect of his or her placement under protection.

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Agreement.

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(2) A protection agreement shall set out the terms and conditions under which a witness or related person is to be placed under protection, including -

(a) an obligation on the Chief Witness Protection Officer -

(i) to take such reasonable steps as are necessary to provide the protected person with the protection and related services, as referred to in the protection agreement concerned; and

(ii) not to keep a protected person under protection in any prison or police cell, unless otherwise agreed upon;

(6) an obligation on the witness or the related person —

(i) where applicable, to give the evidence as required in the proceedings to which the protection relates;

(ii) to meet all financial obligations incurred by him or her that are not payable by the Unit in terms of the protection agreement;

(iii) to meet all legal obligations, including any obligation regarding the custody and maintenance of children and_ taxation obligations;

(iv)to refrain from activities that constitute a criminal offence:

(v)to refrain from activities that might endanger his or her safety or that of any other protected person;

(vi)to accept and give effect to all reasonable requests and directions made or given by any member of the Unit in relation to the protection provided to him or her and his or her obligations;

(vii) to inform the Unit of any civil proceedings which have or may be instituted by or against him or her or in which he or she is otherwise involved;

(viii) to inform the Unit of any proceedings in

which he or she was or may be involved,
either as a witness or accused or otherwise;
and

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(ix) not to endanger the security or any other aspect of the protection of witnesses and related persons or related services or any other matter relating to a Programme provided for in this Act;

(c) any other prescribed terms and conditions or obligations agreed upon; and

(d) a procedure in accordance with which the protection agreement may, if necessary, be amended.

16. (1) For the purposes of this Act, the Unit may apply to the Court for an order authorizing a specified person or class of persons -

(a) to make a new entry in the register of births, register of deaths or register of marriages in respect of a witness;

(b) to issue in the witness's new identity a document of a kind previously issued to the witness.

(2) The Court may, if it is satisfied that the life or safety of that person may be endangered by virtue of the person being a witness, make a witness protection order.

(3) Any proceedings of the Court under this section shall be conducted in camera, and all records of the proceedings shall be sealed.

(4) While making of a witness protection order under sub-section (2), any person authorized to do so by the order may make such entries in the register of births, register of deaths or register of marriages as are necessary to give effect to the order.

(5) An entry made in the register of births, register of deaths or register of marriages shall have effect as if it were a valid entry made under the Births, Deaths and Marriages Act.

17. (1) Any person who is aggrieved by an order passed under section 16 above, may appeal against such order to the High Court within thirty days from the receipt of such order.

(2) The High Court shall decide the appeal as expeditiously as possible and preferably within thirty days from the date of service of notice on respondent.

Court Orders
Protecting
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Appeal.

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18. (1) The protection and assistance provided under the Programme -

(a) shall be terminated by Chief Witness Protection Officer if the participant or, as the case may be, protected person requests in writing that it be terminated; and

(6) may be terminated in writing by Chief

Witness Protection Officer if -

- (i)
- (ii)
- (ii)
- (iv)
- (v)
- (vi)
- (vii)

the witness deliberately breaches a requirement or undertaking relating to the Programme;

the witness's conduct or threatened conduct is, in the opinion of the Chief Witness Protection Officer, likely to threaten the security or compromise the integrity of the Programme; or

the circumstances that gave rise to the need for protection and assistance for the witness have ceased to exist, and the Chief Witness Protection Officer is of the opinion that, in all the circumstances of the case, the protection and assistance should be terminated.

the safety of the person is no longer threatened;

satisfactory alternative arrangements have been made for the protection of the person;

the witness, in making application for

placement under protection, willfully furnished false or misleading information or particulars or made a statement which is false or misleading in any material respect, or willfully failed to disclose any information or particulars material to his or her application:

the behavior of the person has endangered or may endanger the safety of any protected person;

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Termination of protection and assistance.

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(viii) the evidence of a witness is no longer required in the concerned proceeding which might be established upon receipt of a written notice given by the interested functionary or that such proceedings have been concluded by written notice.

(2) A decision of the Unit to terminate protection and assistance under the Programme shall take effect -

(a) when the Unit notifies the witness of the decision;

(b) if the witness's location is not known and the Chief Witness Protection Officer has taken steps to notify the witness, at the end of a period of twenty eight days after those steps were taken.

19. Any person aggrieved by any decision of or steps taken by the Chief Witness Protection Officer or any person acting on behalf of the Chief Witness Protection Officer under the provisions of this Ordinance, may within the prescribed period and in the prescribed manner, apply to Government to review the decision or steps taken.

20. (1) A person whose protection has not been terminated shall not disclose his or her former identity for any purpose, and it shall be lawful for that person, in any proceedings or for any purpose to claim that his or her new identity is his or her only identity.

(2) If there are reasons to believe that a protected person who has been provided with a new identity under the Programme is using the new identity to -

(a) avoid obligations that were incurred before the new identity was provided; or

(b) avoid complying with restrictions that were imposed before the new identity was provided,

(3) The Unit may, after giving notice in writing to the protected person, take appropriate legal action against him.

Review by the
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Obligation on
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21. The Unit may, if it considers appropriate, restore the former identity of a person whose protection and assistance under the Programme has been terminated.

22. (1) No person shall disclose any information which in the exercise of powers, performance of functions or carrying out the duties conferred upon, assigned to or imposed upon him or her by or under this Act or in the course of the performance of any functions relating to the provisions of this Act except -

(a) for the purpose of giving effect to the provisions of this Act;

(b) when required to do so by any competent

court;

(c) if he or she is authorized thereto by the Chief Witness Protection Officer; or

(d) in terms of sub-section (2).

(2) The Chief Witness Protection Officer may, subject to sub-section (1), and on such terms and conditions as he disclose any information in respect of protected person -

deems fit,

(a) with the consent of the protected person; or

(b) in any criminal proceedings if the disclosure is necessary to establish the guilt or the innocence of a person;

if the Chief Witness Protection Officer is notified by the competent authority that the protected person is under investigation for, or has been arrested for, or is charged with a serious offence, the Chief Witness Protection Officer may -

(c)

(i)

(ii)

(ii)

release to that authority the new identity or location of the person;

provide that authority with the criminal

record and fingerprints of the person;
release to that authority such other
information as Chief Witness Protection
Officer considers appropriate in the
circumstances; and

(iv) otherwise cooperate with that authority.

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Restoration of
former identity.

Disclosure of
Information.

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(3) The Chief Witness Protection Officer shall, in determining whether information in respect of a protected person should be disclosed as contemplated in subsection (2), take into account -

(a) the reasons for the disclosure;

(6) the probability that the disclosure may endanger the safety of the protected person concerned or that of any other protected person or the integrity of a Programme under this Act;

(c) whether the need for the disclosure can effectively be met by any other means:

(d) whether there are effective means available to prevent any _ further disclosure of the information;
and

(e) any other factor that, in the opinion of the Chief Witness Protection Officer should be taken into account.

(4) Any person who contravenes the provisions of sub-section (1), commits an offence and _ shall, on conviction, be punished with imprisonment for a term not exceeding twenty years.

23. (1) Where in any proceedings in a court, tribunal, commission or in any inquiry, the identity of protected person is in issue or may be disclosed, the court, tribunal, commission or inquiry shall, unless it considers that the interest of justice requires otherwise -

(a) conduct that part of the proceedings that relates to the identity of the participant in camera; and

(b) make such order relating to the suppression of publication of evidence given before the court, tribunal, commission or inquiry as, in its opinion, will ensure that the identity of the protected person is not disclosed.

(2) Any civil proceedings in which a protected person is a party or a witness, may be proceeded within terms of the laws regulating such proceedings. However, if it appears to a Judge of the court in an application, made to him by the Chief Witness Protection Officer that the safety of any protected person might be endangered by

the institution or prosecution of any civil proceedings in which a protected person is a party or a witness, the Judge may make any order as he deems appropriate with regard to the institutions or prosecution or postponement of those proceedings in a manner aimed

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protected person
not to be
disclosed in Court
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at -

(a) preventing the disclosure of the identity or whereabouts of the said person; or

(6) achieving the objects of this Act.

(3) The address of the Unit shall for all purposes of service of process on a protected person serve as the address of such person.

24. Notwithstanding anything contained in any law for the time being in force or any judgment of any court, the Protection Officer shall, at any proceedings instituted or conducted in terms of any law, in which the protected person is a party or a witness and in respect of which he or she is in terms of any law compellable to answer questions or to give evidence or to produce any book, record, document or object in his or her possession or under his or her control in such proceedings, make an order prohibiting the publication of any information, including any drawing, picture, illustration, painting, photograph, whether produced through or by means of computer software on a screen or a computer print-out, pamphlet, poster or other printed matter, which may disclose -

(i) the place of safety or location where he or she is or has been under protection or where he or she has been relocated in terms of this Act;

(ii) the circumstances relating to his or her protection:

the identity of any other protected person and the place of safety or location where such person is being protected: or

(ii

the relocation or change of identity of a protected person, unless the Chief Witness Protection Officer satisfies the protection officer | concerned that exceptional circumstances which are in the interest of justice exist why such an order should not be made.

(iv

25. (1) Any person who -

(a) willfully or negligently allows any unauthorized person to gain access to any protected person;

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information
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(b) willfully or negligently discloses, in contravention of any provision of this Act —

(i) the identity of any protected person;

(ii) information that a particular protected person is under protection:

(iii) the place of safety or location where any person is under protection or has been relocated in terms of this Act:

(iv) any information which could lead to the identification of any such person or any such place of safety;

(v) any information which undermines or compromises or could undermine or compromise the integrity of a Witness Protection Programme in terms of this Act;
or

(vi) any information relating to the relocation or change of identity of a protected person;
or

(vii) any information that compromises the security of such a person;

(c) willfully or negligently contravenes any provisions of exception contained in this Act regarding disclosure of information or in contravention of any conditions determined by the Chief Witness Protection Officer, shall be guilty of an offence and on conviction be liable to a fine or to imprisonment for a period not exceeding three years.

(2) (a) Any person who-

(i) willfully interferes with, or hinders or obstructs the Chief Witness Protection Officer or any other member of the Unit in the exercise, performance or carrying out of any of his or her powers, functions and _ duties contemplated in this Act; or

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(ii) with intent to gain for himself or herself or for any other person protection in terms of this Act, makes any false statement or furnishes information that he or she knows to be untrue or misleading, shall be guilty of an offence and on conviction be liable to a fine or to imprisonment for a period not exceeding five years.

26. Any person who abets or attempts to commit any offence punishable under this Act shall be liable to be punished with the punishment provided for that offence.

27. Nothing contained in this Act shall derogate from the powers of a Police Officer to provide protection and assistance to a witness under Police Act, 1861 and rules made thereunder.

28. (1) The Chief Witness Protection Officer shall, not later than 31st day of January of the following year, submit an annual report to Government relating to the general operation, performance and effectiveness of the Programme.

(2) The Chief Witness Protection Officer may, whenever he considers it necessary to do so, submit special report to Government on any matter relating to the Programme.

29. Government may make rules for carrying out the purposes of this Act.

SCHEDULE

(Schedule 2(k)

(Offences in respect of which a witness or related person may be placed under protection)

Treason

Sedition

Murder

Rape

Public violence

Robbery-

(a) when there are aggravating

circumstances; or

(b) involving the taking of a motor vehicle.

7. Kidnapping

8. Defeating the ends of justice.

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Perjury.

Indecent assault on a child under the age of 16 years, involving the infliction of grievous bodily harm.

Any offence related to contraband drugs and drugs trafficking if -

(a) the value of the substance and question is more than rupees one million; or

(6) the offence was committed by any law enforcement officer.

Any offence referred to in Anti-Terrorism Act.

Any offence relating to —

(a) the dealing in or smuggling of ammunition, firearms, explosives or armament; or

(b) the possession of an automatic or semi-automatic firearm, explosives or armament.

Any offence relating to exchange control, corruption, extortion, fraud, forgery, uttering or theft-

(a) involving amounts of more than rupees five million; or

(6) — involving amounts of more than rupees one million if it is alleged that the offence was committed by a person, group of persons, syndicate or any enterprise acting in the execution or furtherance of a common purpose or conspiracy; or

(c) if it is alleged that the offence was committed by any law enforcement officer —

(i) involving amounts of more than rupees one million; or

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(ii) as a member of a group of persons, syndicate or any enterprise acting in the execution or furtherance of a common purpose or conspiracy.

Any offence referred to in any law relating to offences of sabotage against the State.

Any conspiracy, incitement or attempt to commit any offence referred to in_ this Schedule,

Any other offence as may be prescribed.

Any other offence in respect of which it is alleged that the offence was committed by -

(a) a person, group of persons, syndicate or any enterprise acting in the execution or furtherance of a common purpose or conspiracy; or

(6) a law enforcement officer, and _ in respect of which the Chief Witness Protection Officer is of the opinion that the safety of a witness who is or may be required to give evidence, or who has given evidence in respect of such an offence in any proceedings or any related person, warrants protection.