



**DISSERTATION  
ON**

**Protection of Witness in Bangladesh: Challenges and Need for New  
Legal Development**

**Course Title: Supervised Dissertation**

**Course Code: LAW 406**

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**Date of Submission: 19.05.2022**



## Consent Form

The dissertation titled Protection of Witness in Bangladesh: Challenges and need for New Legal

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of Course 406 (Supervised Dissertation) for LL.B. (Hons.) degree offered by the Department of

Law, East West University is approved for submission.

.....

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Date:

## **Acknowledgement**

With the completion of this study, I express my gratitude and hope that this effort may go ahead to serve as one of the many grounds for the protection of Witness in Bangladesh. First of all, I would like to thank my almighty for giving me the strength and patience to finish this research without any hindrance and trouble. I cordially express my thankfulness to Dr. Md. Mehedi Hasan, Chairperson & Assistant Professor, Department of Law for allowing me to take charge of this research work. I would like to express my sincere gratitude to my honorable Supervisor Dr. Nabaat Tasnima Mahbub (Assistant Professor, Department of Law, East West University) Ma'am immensely for her motivation, cooperation, suggestion, patience and immense knowledge. This research wouldn't have been possible without the efforts, supervision and contribution of my honorable and respective faculty members of the Department of Law, East West University. Finally, I would thank my family members and friends who supported me and prayed for me to the almighty Allah.

### **Declaration**

I, Khan Mohammad Abu Saleh, bearing student ID: 2018-2-66-009, declare that the work in this dissertation titled “Protection of Witness in Bangladesh: Challenges and need for New Legal Development” has been carried out by me. This is my original work and information used for this research has been duly acknowledged. I have not published this work in any Journal, Newspaper or Article.

## Table of Contents

<b>Abstract.....</b>	<b>7</b>
<b>Chapter-1 .....</b>	<b>8</b>
<b>Introduction.....</b>	<b>8</b>
<b>1.1 Background of the study .....</b>	<b>8</b>
<b>1.2 Research Question.....</b>	<b>8</b>
<b>1.3 Research Justification.....</b>	<b>8</b>
<b>1.4 Research Methodology .....</b>	<b>9</b>
<b>1.5 Literature Review.....</b>	<b>9</b>
<b>1.6 Limitations of studies.....</b>	<b>10</b>
<b>1.7 Dissertation Outline.....</b>	<b>10</b>
<b>Chapter-2.....</b>	<b>11</b>
<b>Witness Protection: Concept, Historical Background and Significance.....</b>	<b>11</b>
<b>2.1 Introduction.....</b>	<b>11</b>
<b>2.2 Concept &amp; Role of Witness.....</b>	<b>11</b>
<b>2.3 History and origin of Witness Protection.....</b>	<b>13</b>
<b>2.4 Significance of witness protection.....</b>	<b>14</b>
<b>2.5 Conclusion.....</b>	<b>14</b>
<b>Chapter-3.....</b>	<b>16</b>
<b>Witness protection in Bangladesh.....</b>	<b>16</b>
<b>3.1 Introduction.....</b>	<b>16</b>

3.2 Current position of witness protection in Bangladesh.....	16
3.3 Challenges and Shortcomings of witness protection in Bangladesh .....	17
3.4 The Constitution of People’s Republic of Bangladesh.....	18
3.4.1 The Evidence Act, 1872.....	18
3.4.2 The Penal Code, 1860.....	19
3.4.3 Prevention and Suppression of Human Trafficking Act, 2012.....	19
3.4.4 Witness protection under International Crimes Tribunal Act,1973.	19
3.5 Conclusion .....	20
Chapter 4.....	21
Development & Practice of Witness protection in other countries.....	21
4.1 Introduction .....	21
4.2 International standard on witness protection.....	21
4.3 Position of Witness Protection in Developed & Developing countries.....	23
4.3.1 United Kingdom.....	23
4.3.2 United States of America .....	24
4.3.3 Pakistan.....	25
4.3.4 India.....	27
4.4 Conclusion.....	29
Chapter-5.....	30
Findings and Recommendations.....	30
5.1 Findings.....	30
5.2 Recommendation and Concluding Remarks .....	31
Bibliography.....	33

## Abbreviation

ICT	International Crime Tribunal
ICC	International Criminal Court
ICTY	International Tribunal for the former Yugoslavia
ECCC	Extraordinary Chambers in the Courts of Cambodia
ICTR	International Criminal Tribunal for Rwanda
STL	Special Tribunal for Lebanon
SCSL	Special Court for Sierra Leone
YJCEA	Youth Justice and Criminal Evidence Act
WITSEC	Federal Witness Security Program
ICT	Islamabad Capital Territory

## **Abstract**

Evidence is a well-established and well-understood legal concept. Evidence Law was developed during the colonial period and is still considered the most flawless law today. The Act has undergone numerous revisions and modifications. After all, it is the evidence that assists a court in reaching a decision. WITNESSES are crucial in this regard. Witnesses assist the court and investigators in identifying the perpetrators. Not all countries have established witness protection laws or programs, and it is particularly unfortunate for Bangladesh that it is one of them. It is essential to incorporate and implement witness protection measures in order to increase their capacity to more successfully prosecute the criminals. The purpose of this dissertation is to explain the concept of Witness Protection, as well as its potential legal application and obstacles in Bangladesh.



## **Chapter-1**

### **Introduction**

#### **1.1 Background of the Study**

The witness is considered to be a vital instrument to determine the truth of the criminal and civil case. Witnesses are called the eyes and ears of justice.<sup>1</sup>The whole case depends on the evidence of the witness. By giving evidence relating to any offense, the witness performs a sacred function to discover the truth. The witness is often getting threats, intimidation, and harassment from the accused. Thus, the witness loses their interest in giving evidence to the court, therefore, the court fails to come to a fruitful conclusion, and the offender gets privileges for committing the same offense again. Interestingly, there is no law regarding witness protection. Thus, witnesses feel unsafe. Nowadays, witness insecurity is increasing day by day in Bangladesh and the witness does not get any remedy caused by the accused. This paper intends to discuss the present situation of the witness in Bangladesh and also will discuss the necessity of specific legislation regarding witness protection in Bangladesh. In addition, this dissertation will discuss remedies for witness protection and barriers regarding the issue.

#### **1.2 Research Question**

The dissertation will focus on one research question as in, to what extent the current legal framework of Bangladesh ensures the issue of witness protection?

#### **1.3 Research Justification**

Witness is the most vital element in every judicial proceeding. In every case, there must be a witness and without having any proper witness no case comes to a fruitful conclusion. The witness plays an important role in proving every case. But the witness nowadays is under threats, vulnerability, intimidation, coercion, and harassment by the opposite party or the offenders. However, the opposite party or the offenders are prevented from giving evidence before the courts and tribunals at the trial of the case. In the present day, it is a common scenario that the witnesses

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<sup>1</sup> Sanchita Kadam, *Protecting the eyes and ears of justice: The Witness (CJP, 08, Nov 2019)*.  
<<https://cjp.org.in/protecting-the-eyes-and-ears-of-justice-the-witness/>> [Accessed 16 May 2022].

do not come regularly to the court to give evidence and the core reason behind this is lack of protection of the witnesses. Thus, the research paper will examine thoroughly the significance of Witness protection and the dire need of having witness protection law all over the world.

#### **1.4 Research Methodology**

The research will be conducted following the qualitative research method where books, journals, articles, laws of various countries and international laws will be discussed and analyzed to reach the purpose of this dissertation. For the research, Statutes or Acts of Parliament and Judicial Decisions are considered as primary sources of information whereas Books, national and international journals, newspaper articles, websites, blogs and other online sources are considered as secondary sources of information.

#### **1.5 Literature Review**

Witnesses are a core element in any judicial system. Without having any witness, the court cannot conduct the judiciary properly. In his article '*Myth: Eyewitness Testimony is the Best Kind of Evidence*' Stephen L. Chew<sup>2</sup> discussed witnesses and how important eyewitnesses, expert witnesses and character witnesses are. That eye-witness is the most reliable form of witness in criminal cases and it is the strong evidence for criminal cases. Rahman & Hassan in the chapter '*Necessity of Legislation for the Protection of witness in Bangladesh: A Legal Study*'<sup>3</sup>The Judicial Administration Training Institute discussed the specific law regarding witness protection in the Bangladesh legal system. Not only this, this chapter of the book has recommended suggestions on how to apply and strengthen the law. The researcher also relied on the article *Witness Protection: Safeguarding the Eyes and Ears of Justice* by Kumar & Goyal<sup>4</sup> to imply the significance of safeguarding in the territory of Bangladesh. Besides, the researcher has also relied on articles such

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<sup>2</sup> Stephen L. Chew, '*Myth: Eyewitness Testimony is the Best Kind of Evidence*' (APS, 20 August, 2018), <<https://www.psychologicalscience.org/teaching/myth-eyewitness-testimony-is-the-best-kind-of-evidence.html>> [Accessed 16 May 2022].

<sup>3</sup> Atwar Rahman & Mohammad Mahdy Hassan, *Necessity of Legislation for the Protection of witness in Bangladesh: A Legal Study*, (2020) 14 Judicial Administration Training Institute 26,28

<sup>4</sup> Sanjeev Kumar and Abhishek Goyal, *Witness Protection: Safeguarding The Eyes And Ears Of Justice*, [2020], Mondaq connecting and people, <<https://www.mondaq.com/india/trials-appeals-compensation/914274/witness-protection-safeguarding-the-eyes-and-ears-of-justice>> [Accessed 3<sup>rd</sup> April 2022].

as Mohammad Nomanul Islam, *Introducing a witness and victim protection law*,<sup>5</sup> and Professor K. Shamsuddin Mahmood, *The necessity of enacting witness protection law*.<sup>6</sup>

### **1.5 Limitations of the Study**

This research has been focused on the basic rights of the witness. Over and above, the limitation of this research is the non-availability of resources. Besides, non-availability of Bangladeshi case laws on the internet and most importantly non-availability of particular books. Moreover, many books and online journal articles are not available online or are a paid website which is not accessible. The time period to complete the dissertation is two and a half months. There was not much time to do quantitative research.

### **1.6 Dissertation Outline**

This dissertation put immense significance on having a Witness Protection law in Bangladesh. In Chapter 2 of the dissertation the author discussed the History, Concept and Significance of witness protection law.

In Chapter 3 the author discussed the position and failings of witness protection law in the context of Bangladesh and focused.

In Chapter 4 the author focused on the development and application of Witness Protection laws in other developed countries and compared how Bangladesh is far away from applying the law in its territory, addressing its limitations and criticism.

Lastly, in Chapter 5 the author discussed all the findings and recommendations.

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<sup>5</sup> Mohammad Nomanul Islam, *Introducing a witness and victim protection law*, (*The Daily Observer*, 30 November, 2019) <<https://www.observerbd.com/news.php?id=230884>> [Accessed 3d April 2022]

<sup>6</sup> Professor K. Shamsuddin Mahmood, *The necessity of enacting witness protection law*, (*The Daily Star*, Feb 11, 2020) <<https://www.thedailystar.net/law-our-rights/news/the-necessity-enacting-witness-protection-law-1866439>> [Accessed 3d April 2022]

## Chapter-2

### Witness Protection: Concept, Historical Background and Significance

#### 2.1 Introduction

A witness is a person who comes towards the court and has to answer all questions asked by the court.<sup>7</sup> The answers given by the witness are called evidence.<sup>8</sup> The court will send the notice to the witness and the witness is bound to go to the court for the purpose of revealing the truth. The court will mention the time, date, and place for giving the witness in the court. After giving the evidence they are often getting the threat, intimidation, and harassment from the accused and there is no remedy for the witness. Without having any witnesses, the court cannot conduct the judiciary properly. Therefore, it is the duty of the state to protect the witness.

#### 2.2 Concept & Role of Witness

According to Black's Law Dictionary, "Witness sees, knows or vouches for something or one who gives testimony, under oath or affirmation in person or by oral or written deposition, or by affidavit".<sup>9</sup> In law, witness means who has knowledge regarding the offense and who willingly or under binding gives testimonial evidence either oral or written what they know and claim to know.<sup>10</sup> A witness must take an oath when giving evidence before the court then he is bound to tell the truth within his knowledge. After giving the witness the judge evaluates the witness's testimony. The witness is neither accused nor victim thus witness has no hazard in the judgment of the court.<sup>11</sup> The witness performs a public duty by assisting the court to determine the truth of a particular case.<sup>12</sup> The witness conceded his time to the court for giving evidence.<sup>13</sup> However, there

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<sup>7</sup> Being a Witness, Northwest territories Justice <<https://www.justice.gov.nt.ca/en/files/victim-services/Being%20a%20Witness.pdf>> [Accessed 9th March, 2022]

<sup>8</sup> ibid

<sup>9</sup> Godara, P., 2022. *Examination Of Witness: Legal Aspects - Litigation, Mediation & Arbitration - India*. (Mondaq 05 June 2020) <<https://www.mondaq.com/india/trials-appeals-compensation/947522/examination-of-witness-legal-aspects>> [Accessed 21 April 2022].

<sup>10</sup> *The Role of Witness*, Éducaloi <<https://educaloi.qc.ca/en/capsules/the-role-of-witnesses/>> [Accessed 9th March, 2022]

<sup>11</sup> *Importance of a Witness*, (Law Teacher, 6th Aug 2019) <<https://www.lawteacher.net/free-law-essays/administrative-law/importance-of-a-witness-law-essays.php>> [Accessed 9th March, 2022]

<sup>12</sup> ibid

<sup>13</sup> The Role of Witness (n 10)

is no benefit to the witness. Therefore, the state should treat them as a guest. Many countries treat them as guests and give protection for giving evidence.

There are three types of witnesses. Such as, eyewitnesses, expert witnesses, and character witnesses.<sup>14</sup> An eyewitness is the most reliable form of witness in criminal cases and it is the strong evidence for criminal cases.<sup>15</sup> Eyewitnesses play a vital role in uncovering the truth regarding the case.<sup>16</sup> Eyewitnesses always observe the crime and also the perpetrators who took part in that crime. Sometimes an eyewitness is the only source in terms of identification. In such circumstances, those statements given by the witness are accepted by the court.<sup>17</sup> An expert witness is a person whose opinion is accepted by the court by virtue of his training, extra skill, education, and merit. An expert witness will provide an independent opinion by the virtue of his expertise.<sup>18</sup> He is required when it is necessary to establish the truth and no other evidence is available. The court is not bound to accept all the reports or comments given by the expert witness.<sup>19</sup> However, the court calls the expert witness for special circumstances and hypothetical questions. The experts supply something that non-expert cannot supply. Thirdly, the character witness. Character witness plays an important role in criminal and civil cases. However, the applicability of the character witness has become limited in criminal and civil cases.<sup>20</sup> A character witness is needed to determine the guilt of the accused. A character witness is a person who provides facts that introduces the defendant's character.<sup>21</sup> Generally, the character witnesses are the family members or those people who know the defendant personally.<sup>22</sup> It is most important to help establish the

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<sup>14</sup> Chew (n 2)

<sup>15</sup> Chew (n 2)

<sup>16</sup> *Eyewitness Evidence: A Guide for Law Enforcement*, (US Department of Justice, October 1999) < <https://www.ojp.gov/pdffiles1/nij/178240.pdf> > [Accessed 6<sup>th</sup> March 2022]

<sup>17</sup> *Problems in Using Eyewitness Testimony*, (Law Teacher 31st May 2019) < <https://www.lawteacher.net/free-law-essays/criminal-law/problems-of-eyewitness-testimony.php> > [Accessed 15<sup>th</sup> March 2022]

<sup>18</sup> The Academy of Experts, '*What is an expert witness*' < <https://academyofexperts.org/users-of-experts/what-is-an-expert-witness/> > [Accessed 6<sup>th</sup> March 2022]

<sup>19</sup> *ibid*

<sup>20</sup> Keller Law Offices, *Three Types of Witnesses in a Criminal Case* < <https://kellerlawoffices.com/witnesses-in-criminal-case/> > [Accessed 6<sup>th</sup> March 2022]

<sup>21</sup> *Ibid*

<sup>22</sup> Keller Law Offices (n 20)

character and behavior of the defendant.<sup>23</sup> The character witness is usually needed when morality and honesty are in question.<sup>24</sup>

### **2.3 History and origin of Witness Protection**

Witness protection is the provision of security to a witness by the police before, during, and after a trial. While some witnesses only need protection until the end of a trial, others are given a new identity and spend their lives under government protection. Witness protection is commonly required in organized crime cases, when witnesses may be intimidated by defendants' associates. It is frequently utilized in war crimes and espionage prosecutions.

The Organized Crime Control Act of 1970 established an official witness protection program managed by the US Marshals Service. The Ku Klux Klan Act of 187<sup>25</sup> had already established witness protection for those testifying against Klan members.<sup>26</sup> Earlier in the century, the FBI created false identities to protect witnesses.<sup>27</sup> The US Marshals Service protects the lives of government witnesses and their close family members who testify against drug traffickers, terrorists, organized crime members, and other big criminals.<sup>28</sup> The Organized Crime Control Act of 1970 authorized the Witness Security Program, which was updated in 1984. Since its inception in 1971, the Witness Security Program has effectively protected nearly 19,000 individuals from intimidation and reprisal.<sup>29</sup> This program's success has been generally recognized as a useful instrument in the government's fight against major criminal conspiracy and organized crime.<sup>30</sup> Other countries have taken steps by enacting applicable national legislation or making procedural

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<sup>23</sup> Keller Law Offices (n 20)

<sup>24</sup> Keller Law Offices (n 20)

<sup>25</sup> The Ku Klux Klan Act of 1871

<sup>26</sup> History.house.gov.*The Ku Klux Klan Act of 1871 | US House of Representatives: History, Art & Archives.* Available at: <[https://history.house.gov/Historical-Highlights/1851-1900/hh\\_1871\\_04\\_20\\_KKK\\_Act/](https://history.house.gov/Historical-Highlights/1851-1900/hh_1871_04_20_KKK_Act/)> [Accessed 16 May 2022].

<sup>27</sup> Micheal T. Kaufman, *Gary T. Rowe Jr. Who Informed on Klan In Civil Rights Killing, Is Dead*, 1998, The New York Times, [Accessed 30<sup>th</sup> April, 2022]

<sup>28</sup> ibid

<sup>29</sup> Witness Security Program, (US Marshal Service, 5<sup>th</sup> may 2002)<<https://www.usmarshals.gov/witsec/>>[Accessed 16 May 2022].

<sup>30</sup> ibid

provisions to protect witness testimony. Australia in 1983, South Africa in 1996, Germany in 1998, Colombia in 1991. Witness protection is now regarded as a critical function.<sup>31</sup>

## 2.4 Significance of Witness Protection

The witness occupies a key position in the court system. Witnesses play a critical role in ensuring the proper running of a trial. Many jurists have referred to them as the "foundation" of any trial, whether civil or criminal, because it is on their shoulders that the case's outcome rests.<sup>32</sup> Witness protection is a crucial tool in criminal justice, especially in cases of organized crime and terrorism. Many countries have devised and deployed witness protection mechanisms to ensure that vital testimony is available as part of connected criminal procedures. Witness protection can include concealing a witness's identity or that of his/her family, using video conferencing during the trial, anonymous testimony, and physical protection. Depending on the situation, full-fledged witness protection programs may entail physical relocation, identity alteration, and social reintegration.<sup>33</sup>

During the process of delivering justice to the victim, the courts rely heavily on the testimony of witnesses. The witness's credible information aids the court in determining the case's correct findings. They serve as a wake-up call for the judges. As a result, the witness plays an important role that must not be overlooked. The prosecution of criminal cases would be impossible without the participation of witnesses.<sup>34</sup>

## 2.5 Conclusion

So that witnesses can testify in court without fear of being harmed or intimidated by the accused, the purpose should be to protect and protect witnesses. In order to testify against members of

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<sup>31</sup> *Witness Protection- Policy Options for the Criminal Justice System in Khyber Pakhtunkhwa*, [2018] UNODC <<https://www.unodc.org/documents/pakistan/Report-Witness-Protection-Policy-Options-KPK-Web.pdf> > [Accessed 15th March]

<sup>32</sup> Sonia Shrinivasan, *Witness protection programs around the globe*, [2021], iPleaders <<https://blog.iplayers.in/witness-protection-programs-around-the-globe/> > [Accessed 15th March, 2022]

<sup>33</sup> Unodc.org. 2022. *South Asia: The importance of witness protection in criminal proceedings*. [online] Available at: <[https://www.unodc.org/southasia/frontpage/2013/Oct/south-asia\\_-the-importance-of-witness-protection-in-criminal-proceedings.html](https://www.unodc.org/southasia/frontpage/2013/Oct/south-asia_-the-importance-of-witness-protection-in-criminal-proceedings.html)> [Accessed 16 May 2022].

<sup>34</sup> Prashant Rahangdale, *Witness Protection: An Important Measure for the Effective Functioning of Criminal Justice Administration*, [2020], SSRN < [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3539348](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3539348) > [Accessed 15<sup>th</sup> April, 2022]

organized crime, gangs, or terrorist networks, witnesses must be kept secure. They assist the court by clarifying what happened at the crime scene and any other details they know about the incident that are crucial to the case. Because Bangladesh lacks a witness protection law, witnesses are vulnerable. In Bangladesh, the number of lawsuits is always increasing, and a judge cannot dismiss a case without witnesses. No witness protection law discourages witnesses. Our judicial system has no clear witness protection law. It's past time for a witness protection law. The judicial system will be stronger and fairer when a witness protection law is implemented.



## Chapter-3

### Witness Protection in Bangladesh

#### 3.1 Introduction

Witnesses are a core element in any judicial system. That's why the protection of witnesses has become a necessity and a major concern for Bangladesh. Bangladesh is a common law country and the legal system of this country was developed by the British rulers during colonial rule. After independence in 1971, the parliament of Bangladesh was authorized to enact statutory law. The supreme court of Bangladesh holds the power to interpret laws made by the parliament of Bangladesh and to declare such null and void. Parliament performs a crucial part of the legislative process. After independence the parliament of Bangladesh enacted various kinds of law based on the circumstances of this country. Interestingly, the parliament is silent to enact any law regarding witness protection.

#### 3.2 Current Position of Witness Protection in Bangladesh

The condition of witnesses in the legal system of Bangladesh is pathetic. It is not uncommon to see the witness turning hostile by threat, coercion, oppression or muscle power. Thus, witnesses give testimony and statements in favor of the accused. The reason is that witnesses are not safe in Bangladesh and after giving evidence they suffer many hassles by the opposite party. In Tonu rape case, Mizanur Rahman Shohag was seen giving an interview on television, after he was abducted.<sup>35</sup> He was released after sixteen days of abduction. Therefore, his family were denied a further statement.<sup>36</sup> In some cases, a victim faces many hassles when they are filing rape cases. as example, a writ was filed against the rape of Garo girl.<sup>37</sup> She was picked up from Kuril flyover, Dhaka and was raped in a running car. After being raped she and her family went to turag police station and the police refused to take any case on the ground that there was no jurisdiction over that thana. Then she and her family went to Gulshan police station around 5. 00 A.M and the thana refused to

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<sup>35</sup> Rafiul Islam, Sohag returns after 16 days, *The Daily Star*, [ Dhaka, Apr 13, 2016], <<https://www.thedailystar.net/frontpage/sohag-returns-after-16-days-1208281> > [Accessed 15<sup>th</sup> April> 2022]

<sup>36</sup> Ibid

<sup>37</sup> *Garo girl gang-raped*, *The Daily Observer* (Dhaka, 23 May, 2015) <<https://www.observerbdt.com/2015/05/23/90343.php> > [Accessed 15<sup>th</sup> April, 2022]

take the case. After that, they went to Bhatara police station and the officer-in-charge was absent. Therefore, they were bound to wait. Finally, the case was registered at 12.30 p.m. Then, the victim was sent to the hospital for a medical test. Therefore, the High Court division held that, any rape, sexual harassment or similar incident can be filed at any police station.<sup>38</sup> There shall be no jurisdiction of the police station. On 23 July 2006 Mrs. Anita was sleeping in her house. At around 11:00pm, Mr. Panchanan entered Mrs. Anita's house and committed rape.<sup>39</sup> On the same night, Mrs. Anita with her husband and others went to the police station and the officer-in-charge asked some questions to Mrs. Anita and told to return home. But the officer-in-charge did not record the FIR. The next day the police were bound to record an FIR by the intervention of the Human rights agency.<sup>40</sup> However, the police did not arrest Mr. Panchanan. In the meantime, he got anticipatory bail from the High Court. After that, Mr. Panchanan threatened Mrs. Anita to destroy evidence and withdraw the case.<sup>41</sup> The threat was increasing day by day. Therefore, Mrs. Anita held a press conference. Then the Superintendent of Police (SP) of the Khulna district went to Mrs. Anita's house. As a result, no charges had been filed against Mr. Panchanan after 50 days of that incident.<sup>42</sup> No positive result was coming out. They were always under life threat, intimidation, and harassment from the other party. For that reason, the witness of any case does not want to go to the court to give evidence. As a result, the court failed to conclude a case in a fruitful manner.

### **3.3 Challenges and Shortcomings of Witness Protection in Bangladesh**

The criminal justice system in Bangladesh is more than a hundred years old and no important change has taken place. We should consider the present situation when we talk about the law and order of a country. Crime and organized law are not the same today as they were a hundred years ago. A three-member committee of the Bangladesh Law Commission was formed and the head of this committee was Lordship Mr Justice Mostafa Kamal. <sup>43</sup>The committee recommended enacting

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<sup>38</sup> Ibid

<sup>39</sup> Haris Uddin, *BANGLADESH: Rape victim receives serious threats due to the alleged corruption of the Paikgachha police in Khulna*, The Asian Human Rights Commission (AHRC), September 13, 2006 <<http://www.humanrights.asia/news/urgent-appeals/UA-306-2006/>> Accessed 19<sup>st</sup> March, 2022

<sup>40</sup> Ibid

<sup>41</sup> Uddin (n 39)

<sup>42</sup> Uddin (n 39)

<sup>43</sup> Professor K. Shamsuddin Mahmood, *The necessity of enacting witness protection law*, *The Daily Star*, (Dhaka, Feb 11, 2020) <<https://www.thedailystar.net/law-our-rights/news/the-necessity-enacting-witness-protection-law-1866439>> [Accessed 20th March]

a law for protection of the witness and victims. The committee had submitted two reports to the Law Ministry for witness protection.<sup>44</sup> The first report was submitted in 2006 titled ‘Final Report on a proposed law relating to protection of victims and witnesses of crimes involving grave offenses’ and the second report was submitted in 2011.<sup>45</sup> Some additional recommendations were added in the second report such as physical, psychological and economic well-being of the victim and witness.<sup>46</sup> However, this is 2022, and the protection of witnesses has not been enacted. We can say that this is totally negligence of this government. Almost 11 years have passed. If we see, there are many witnesses killed within 11 years. If the parliament enacted any law regarding witnesses, then those witnesses would not be killed. No one knows which year the witness protection law will be enacted. It is very urgent to enact a law regarding witness protection.

### **3.4 Witness Protection and the Laws of Bangladesh**

Article 35<sup>47</sup> The Constitution of the People’s Republic of Bangladesh provides that every accused of a criminal offense shall be entitled to speedy remedy and the trial shall be independent and neutral court or tribunal.<sup>48</sup> If the witness does not come to the court to give evidence, then it is impossible to establish speedy remedy and the trial. The main reason for witnesses not coming to court is that there is no witness protection law in Bangladesh.

#### **3.4.1 The Evidence Act, 1872**

Section 151<sup>49</sup> and 152<sup>50</sup> of the Evidence Act,1872 provides that that forbids any indecent or scandalous question from being asked to the witness.<sup>51</sup> The two sections of the Evidence Act do not protect the witness after giving evidence in court. Generally said two sections are practiced by the lower court. However, there is no protection for witnesses in the Evidence Act,1872.<sup>52</sup>

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<sup>44</sup> Rahman & Hasan (n 3) 30

<sup>45</sup> Rahman & Hasan (n 3) 30

<sup>46</sup> Rahman & Hasan (n 3) 30

<sup>47</sup> The constitution of the People’s Republic of Bangladesh (Act No. of 1972) Article 35

<sup>48</sup> Rahman & Hasan (n 3) 29

<sup>49</sup> The Evidence Act, 1872 (Act No. I of 1972) S 151

<sup>50</sup> The Evidence Act, 1872 (Act No. I of 1972) S 152

<sup>51</sup> Rahman & Hasan (n 3) 29

<sup>52</sup> Rahman & Hasan (n 3) 29

### **3.4.2 The Penal Code, 1860**

According to section 506<sup>53</sup> The Penal code 1860 provides punishment for committing criminal intimidation.<sup>54</sup> The imprisonment for criminal intimidation may extend two years or with fine or with both. If a witness gets intimidation from the other party for giving evidence, then punishment given in section 506 is not adequate and the protection of witnesses is not properly applied in section of the Penal Code, 1860. It is not a protective measure of the witness.

### **3.4.3 Prevention and Suppression of Human Trafficking Act, 2012**

Section 14<sup>55</sup> of the Prevention and Suppression of Human Trafficking Act, 2012 defines the protection of the witness.<sup>56</sup> If any person uses any force or threats or intimidation to the victim or witness at the stage of investigation or trial then he shall be deemed to have committed an offense under this Act. The Punishment is not exceeding 7 years and not less than 3 years and with fine not less than 20 thousand takas.<sup>57</sup> It clearly states about the penalty for threatening the victim or witness. Though the protection is not adequate, the Act was at least addressed with witness protection. However, all the measures taken by the Act are not adequate for witness protection.

### **3.4.4 Witness protection under International Crimes Tribunal Act,1973**

The International Crimes Tribunals Act, 1973 did not contain any provision regarding witness protection law.<sup>58</sup> In June 2011 there was an amendment.<sup>59</sup> A new Rule 58 A (1)<sup>60</sup> has been added for witness and victim protection.<sup>61</sup> The tribunal may suo motu or on the application of any party, may pass an order to the government to ensure the protection.<sup>62</sup> The whole process will be confidential, and no one will be notified. Sub rule 2 provides regarding the camera trial. When it

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<sup>53</sup> The Penal Code,1860 (Act No. XLV of 1860) S 506

<sup>54</sup> Rahman & Hasan (n 3) 29

<sup>55</sup> Prevention and Suppression of Human Trafficking Act, 2012, (Act No. 3 of 2012) S 14

<sup>56</sup> Mohammad Nomanul Islam, *Introducing a witness and victim protection law*, *The Daily Observer*, (Dhaka,30 November, 2019) <<https://www.observerbd.com/news.php?id=230884> >[Accessed 13<sup>th</sup> March, 2022]

<sup>57</sup> Prevention and Suppression of Human Trafficking Act, 2012, (Act No. 3 of 2012) S 14

<sup>58</sup> Umme Wara, WITNESS PROTECTION AND THE ICT IN BANGLADESH, A CONTRARIO ICL, APRIL 17, 2013, <<https://acontrarioicl.com/2013/04/17/witness-protection-and-the-ict-in-bangladesh/> > [Accessed 13<sup>th</sup> March, 2022]

<sup>59</sup> Ibid

<sup>60</sup> International Crimes Tribunals Act 1973, (Act No. XIX of 1973) Section58 A (1)

<sup>61</sup> Wara (n 58)

<sup>62</sup> Wara (n 58)

is necessary to keep confidential of the trail. The witness protection of this provision is not effective for the witness. As example, Syed Wahidul Alam Junu was declared dead by the doctor at Chittagong Medical College Hospital. He had given evidence before the International War crimes tribunal on 12 February against Salauddin Quader Chowdhury.<sup>63</sup> However, the witness protection taken by the International Crimes Tribunals Act, 1973 is not comprehensive measures compared to the international and hybrid criminal tribunals.

### **3.5 Conclusion**

Witness testimony must be truthful for judges, prosecutors, and indirectly for us all. Witness testimony is one sort of evidence that is reviewed similarly to other evidence. In Bangladesh, non-witness protection laws are increasing the failure of justice. It is past time to legalize the witness's rights, privileges, and protection. Without witness protection, the witness becomes a victim. So they are discouraged from providing evidence in court. I think we need a thorough witness protection statute. The purpose should be to protect witnesses and ensure their appearance before investigating agencies, courts, or tribunals without fear of retaliation from the accused. However, both emerging and developed countries appropriately safeguard witnesses. So that the witness is safe, they implement additional regulations and offer the court sufficient measures

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<sup>63</sup> Reason behind Junu's death still unknown, *The Daily Star* (Dhaka, Feb 25, 2013) <<https://www.thedailystar.net/news-detail-270379>> [Accessed 1st April]

## Chapter 4

### Development & Practice of Witness Protection in Other Countries

#### 4.1 Introduction

Under international law there is no definition of who constitutes a witness.<sup>64</sup> Witness protection is an intricate task for international jurisdiction. The international court and tribunals enacted relevant provisions for witness protection. Many years before the witness protection was not effective. But nowadays it is a controversial issue. The international court or tribunals enacted laws for witness protection and the witnesses are taking advantage of those laws. However, the international court or tribunals are unable to give full protection of the witness. One of the reasons is that international jurisdiction does not have any personal police force and international jurisdiction depends upon the state authorities or peace keeping forces.<sup>65</sup> However, the international court and tribunal tries to give witness protection and, in many cases, said court and tribunal gave protection of the witness and those witnesses are satisfied to get protection.

#### 4.2 International Standard on Witness Protection

Witness presence in the court for the good of the proceedings. Therefore, it is the key responsibility of the court to protect them. International Criminal Court (ICC), the International Tribunal for the former Yugoslavia (ICTY), the Extraordinary Chambers in the Courts of Cambodia (ECCC), the International Criminal Tribunal for Rwanda (ICTR), the Special Tribunal for Lebanon (STL) and the Special Court for Sierra Leone (SCSL) enacted relevant laws for the witness protection where the procedure of evidence and how the witness will be protected is established.<sup>66</sup> The Rome Statute of the International Criminal Court, the United Nations Convention against Transnational Organized Crime, ECOSOC Resolution 2005/20 Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime enacted relevant provisions regarding the witness and victim

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<sup>64</sup> Mark Mackarel, Fiona Raitt and Susan Moody, *BRIEFING PAPER ON LEGAL ISSUES AND WITNESS PROTECTION IN CRIMINAL CASES*, The Scottish Executive Central Research Unit 2001, <<http://docs.scie-socialcareonline.org.uk/fulltext/cruwitness.pdf>> [Accessed 5<sup>th</sup> April, 2022]

<sup>65</sup> Romina BEQIRI, *WITNESS PROTECTION IN INTERNATIONAL CRIMINAL COURT*, (MSt Thesis, Lund University 2011) <<https://lup.lub.lu.se/luur/download?func=downloadFile&recordOID=2167029&fileOID=2171585>> [Accessed 1st April, 2022]

<sup>66</sup> Rahman & Hasan (n 3) 31

protection.<sup>67</sup> Article 7(3) of the Rome Statute of the International Criminal Court defines that when the case is in investigation stage then the prosecutor is permitted to protect the interest of the witness including their age, gender and take into consideration the nature of the crime and where crime is sexual violence, gender violence and violence against the children.<sup>68</sup> The Prosecutor takes protective measures, according to Articles and 68(1) of the Rome Statute of the International Criminal Court, indicating that the Prosecutor has the authority to decide on and implement protective measures in connection to his witnesses.<sup>69</sup> According to the Article 54(3)(f) of the Rome Statute of the International Criminal Court defines The Prosecutor may take whatever steps are required to protect the confidentiality of information, the safety of any person, or the preservation of evidence.<sup>70</sup> According to the Article 68(1) of the Rome Statute of the International Criminal Court provides that the court will take into consideration all the relevant factors including age, sexual violence and or violence against children. The language of the Article 68(1) of the Rome Statute of the International Criminal Court is that the prosecutor has an obligation to protect the witness and take reasonable measures during the investigation and prosecution.<sup>71</sup> The reasonable measures taken by the prosecution shall not be prejudicial or those measures shall not be inconsistent with the rights of the accused and the trial shall be impartial.<sup>72</sup>

Article 51(2) of the Rome Statute of the International Criminal Court provides that the prosecutor has the right to amend the provisional rules in urgent cases.<sup>73</sup> When the provisional rules do not give any solution or the situation is exceptional before the court then the prosecutor is permitted to amend the provisional rules.<sup>74</sup> The amendment done by the prosecutor must comply with the provisional rules. If there is any conflict between provisional rules and amended rules, then the statute shall prevail.<sup>75</sup> The judge shall consider the same of the amended provision.<sup>76</sup>

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<sup>67</sup>Rahman & Hasan (n 3) 30

<sup>68</sup> Rahman & Hasan (n 3) 30

<sup>69</sup> MARKUS EIKEL, WITNESS PROTECTION MEASURES AT THE INTERNATIONAL CRIMINAL COURT: LEGAL FRAMEWORK AND EMERGING PRACTICE, [2012], Criminal Law Forum 97,

<sup>70</sup> Ibid

<sup>71</sup> Bequiri (n 65) 10

<sup>72</sup> Bequiri (n 65) 20

<sup>73</sup> Bequiri (n 65) 17

<sup>74</sup> Bequiri (n 65) 17

<sup>75</sup> Bequiri (n 65) 17

<sup>76</sup> Bequiri (n 65) 17

## 4.3 Position of Witness Protection in Developed & Developing Countries

### 4.3.1 United Kingdom

In the United Kingdom, threatening a witness from giving evidence towards the court is one kind of contempt of court.<sup>77</sup> Recently the government has enacted a new law named Criminal Justice and Public Order Act, 1994 which includes punishment for intimidation to the witness. UK protected persons service gives witness protection nationwide in the United Kingdom.<sup>78</sup> They treat people fairly, honestly and impartially. They dealt with thousands of cases in the last 20 years. UK protected persons service is a part of the national crime agency.<sup>79</sup> They gave reasonable service to around 3000 witnesses and the service was delivered by the local police forces.<sup>80</sup> When a witness is in danger or gets threatened by a witness then they change witness identity or change the area of the witness.<sup>81</sup> The new information will not be disclosed; they keep it secret. According to the section 17<sup>82</sup> of the Youth Justice and Criminal Evidence Act 1999 (YJCEA) provides that Concerning intimidated witnesses, the law states that exceptional measures may be used if the quality of evidence produced by a witness is likely to be harmed as a result of the witness's fear or discomfort while testifying in the proceedings.<sup>83</sup> Section 19<sup>84</sup> of the Youth Justice and Criminal Evidence Act 1999 (YJCEA) Act provides that Special measure is not as of right if a witness is in danger, then the prosecutor has to application to the court on behalf of the witness.<sup>85</sup> It is a discretion of a judge whether that witness will get special measure or not. It is a general rule that the name of the witness has to give beginning in the case. However, the trial judge has the inherent power that the witness will not be required to give his name in the case.<sup>86</sup> This practice is rare but when the situation is exceptional then the trial judge uses this inherent power. Witness protection

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<sup>77</sup> Rahman & Hassan (n 3) 32

<sup>78</sup> Owen Bowcott, *Up to 3,000 people believed to be in witness protection programmes in UK*, [2014], The Guardian < <https://www.theguardian.com/law/2014/jan/24/3000-people-witness-protection-programme-uk> > [Accessed 1st April, 2022]

<sup>79</sup> Rahman & Hassan (n-3) 40

<sup>80</sup> Bowcott (n 78)

<sup>81</sup> Disel, J. *Protected persons*. (Nationalcrimeagency.gov.uk. 2022) <<https://www.nationalcrimeagency.gov.uk/what-we-do/how-we-work/providing-specialist-capabilities-for-law-enforcement/protected-persons>> [Accessed 16 May 2022]

<sup>82</sup> Youth Justice and Criminal Evidence Act 1999, S 17

<sup>83</sup> Witness protection and anonymity, CPS, <<https://www.cps.gov.uk/legal-guidance/witness-protection-and-anonymity>> [Accessed 5<sup>th</sup> April, 2022]

<sup>84</sup> Youth Justice and Criminal Evidence Act 1999, S 19

<sup>85</sup> Witness protection and anonymity (n 83)

<sup>86</sup> Witness protection and anonymity (n 83)



only for those people who have given crucial evidence and there is a substantive ground of threats.<sup>87</sup>

It is to be noted how the UK has incorporated the witness protection law, feeling the urgency of it to assist the legal proceedings in its territory. Not only this but the UK legislation has also ensured the protection of each and every single citizen who will either be a part or not guide or assist the investigating process. UK legislation has mentioned specifically about the position of witness in different existing provisions to ensure the safety of witnesses and safeguard their position as an ally.

#### **4.3.2 United States of America**

The law in the United States is developed in the field of witness protection of witnesses. The American witnesses are safe due to potential laws enacted by the United State. In 1970, the United States of America enacted the Organized Crime Control Act,1970 which is also known as WITSEC.<sup>88</sup> Congress enacted WITSEC to provide security by means of relocation. Therefore, there is a pre- requisite that if an individual wants to take protection of WITSEC then the Attorney General will determine a violent crime would be committed against the witness for giving evidence before the trial court.<sup>89</sup> Around 7000 witnesses and 9000 families have participated in the WITSEC program.<sup>90</sup> The WITSEC permits the Attorney General to relocate them and give them new identities, housing, and new employment. However, administration of this service is conducted by the U.S. Marshals Service which technically falls in the Department of Justice.<sup>91</sup> The main duty of the U.S. Marshals Service is to serve as officers of federal courts. U.S. Marshals Service provides 24 protections towards the witness when they are in danger or high probable to be attacked. There is no witness that has been harmed or killed when they are under the observation of the U.S. Marshals Service.<sup>92</sup> WITSEC keeps all of their operations secret. They change the location of the witness as well as their whole family's identity then give a new driving license, new voter card,

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<sup>87</sup> Witness protection and anonymity (n 83)

<sup>88</sup> Tarik Abdel-Monem, "Foreign Nationals in the United States Witness Security Program: A Remedy for Every Wrong?" (2003). Publications of Affiliated Faculty: Nebraska Public Policy Center. 1239

<sup>89</sup> Ibid

<sup>90</sup> Monem (n 88) 1238

<sup>91</sup> Monem (n 88) 1238

<sup>92</sup> Monem (n 88) 1238

birth records and other records.<sup>93</sup> U.S. The Marshals Service just facilitates communication among the program participants. However, some participants have criminal backgrounds themselves.<sup>94</sup> The U.S. The Marshals Service found that approximately seventeen percent had been arrested after joining WITSEC.<sup>95</sup> Even some of participants committed murder. Some participants are also engaged with fraud. After that, WITSEC was revised in 1984 and passed the Witness Security Reform Act.<sup>96</sup> It gave the Attorney General to terminate if he fails the obligation and if there is no reasonable ground of danger of the participant.<sup>97</sup> Therefore, the Attorney General will not be entitled to give such protection. There were many changes such as, "memorandum of agreement" between future participants and the Attorney General.<sup>98</sup> The reason behind that is not to commit any crime of the participants and future obligations. Presently WITSEC is a successful program.

The US has always been the country to recognize the need of new laws in order to smoothen the legal or judicial proceedings. It is seen how the US has enacted a new Act in order to safeguard the position of witness in any legal proceeding acknowledging the vulnerability and struggle of each and every witness. It is appreciable on part of the USA for including some other benefits for the witness to protect their constitutional rights as in Right to life. Following the reforms and amends of developed countries like the UK and US many countries were inspired to incorporate the same in their legal system.

### **4.3.3 Pakistan**

The 2014 Protection of Pakistan Act requires the creation of high security jails with courtrooms to protect prosecution witnesses. Across Pakistan, necessary acts have been enacted. The 2017 federal 'Witness Protection, Security, and Benefit Act' defines a 'witness' as well as those linked with him/her.<sup>99</sup> This law covers 'serious offender' witnesses during investigation, inquiry, and prosecution stages in the Islamabad Capital Territory (ICT).<sup>100</sup> Sindh's law was the first in Pakistan

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<sup>93</sup> Monem (n 88) 1240

<sup>94</sup> Monem (n 88) 1240

<sup>95</sup> Monem (n 88) 1240

<sup>96</sup> Monem (n 88) 1241

<sup>97</sup> Monem (n 88) 1241`

<sup>98</sup> Monem (n 88) 1241

<sup>99</sup> *Witness Protection- Policy options for the Criminal Justice System in Khyber Pakhtunkhwa*, 2018, UNODC <<https://www.unodc.org/documents/pakistan/Report-Witness-Protection-Policy-Options-KPK-Web.pdf>> [Accessed 19th April]

<sup>100</sup> ibid

in 2013.<sup>101</sup> The Sindh Home Office's Witness Protection Unit runs the program.<sup>102</sup> The Chief Witness Protection Officer is the Additional Inspector General of Police, Crime Investigation Department Sindh.<sup>103</sup> The Chief Witness Protection Officer decides who gets into the program based on a report from a committee appointed by the Head of the Unit.<sup>104</sup> The Chief Witness Protection Officer may also terminate protection and/or disclose information about a person covered by the program.<sup>105</sup> The Punjab Witness Protection Bill 2017 (currently It categorizes witness protection procedures into two types: out-of-court and in court. There are two witness protection units: one for anti-terrorism proceedings and the other for other major offenses. The Witness Protection Units are in charge of risk assessment and mitigation.<sup>106</sup>

The UN Convention Against Transnational Organized Crime is ratified by Pakistan.<sup>107</sup> Article 24 of the Convention encourages state parties to implement necessary measures to protect witnesses while respecting due process and the defendant's rights.<sup>108</sup> The measure mentioned under this article are providing effective protection, establishing procedures for physical protection and taking testimony of witnesses under a manner ensuring the protection of the witness<sup>109</sup>, Articles 25-29 support inter-state collaboration, information sharing, and law enforcement training. Pakistan continues to violate Article 29 training and technical assistance in its territory and The Act.<sup>110</sup> In accordance with international practice, the Advisory Board shall counsel the Unit on policy formulation. The Act outlines elements to consider when deciding whether or not to accept someone into the program. However, no such requirements appear to be implemented.<sup>111</sup> However, proper execution of these statutes is still a work in progress, as

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<sup>101</sup> Witness Protection (n 99) 12

<sup>102</sup> Witness Protection (n 99) 12

<sup>103</sup> Witness Protection (n 99) 13

<sup>104</sup> Witness Protection (n 99) 13

<sup>105</sup> Witness Protection (n 99) 13

<sup>106</sup> Witness Protection (n 99) 13

<sup>107</sup> Hijab Waseem, *WITNESS PROTECTION POLICY: A COMPARATIVE ANALYSIS*, University College Lahore Human Rights Review, Vol-IV <<https://humanrightsreviewpakistan.wordpress.com/volume-iv/witness-protection-policy-a-comparative-analysis/>> [Accessed on 13 may 2022]

<sup>108</sup> Ibid

<sup>109</sup> Waseem (n 107)

<sup>110</sup> Waseem (n 107)

<sup>111</sup> Waseem (n 107)

evidenced by various cases. A murder witness for Sabeen Mahmud was killed in 2015.<sup>112</sup> In the same year, two major witnesses in the Naqeebullah Mehsud murder case recanted their claims.<sup>113</sup>

Although Pakistan has provincial and federal witness protection legislation, none have been properly implemented. Provincial laws protect witnesses in Punjab, Balochistan, and Sindh. However, proper execution of these statutes is still a work in progress, as evidenced by various cases.<sup>114</sup>

#### 4.3.4 India

Like Pakistan, India lacks a witness protection scheme, but courts are beginning to recognize its value. It is vital to notice the witness protection laws in this state. Indian courts have recognized that a right to a fair trial involves witness protection. Also, it is vital to understand that the Indian Jurisdiction has sanctions for revealing witness identities.<sup>115</sup> The identity of a witness should be protected not just against physical harm, but also from possible victimization.<sup>116</sup>

In *National Human Rights Commission v. State of Gujarat and Others*<sup>117</sup> The Supreme Court recognized the necessity of witness protection and the responsibilities of the state. The Hon'ble Court was pleased to allow the Special Investigation Team/SIT so constituted in the said case to decide, "which witnesses require protection and the kind of witness protection that is to be made available to such witnesses."<sup>118</sup> In *Rajubhai Dhamirbhai Baria and Ors. v. State of Gujarat*<sup>119</sup> and Ors, the Hon'ble High Court of Bombay emphasized the State's role<sup>16</sup> in developing a

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<sup>112</sup> Waseem (n 107)

<sup>113</sup> Syed Qasim Abbas, Criminal Justice Reform – Delayed FIRs and Ineffective Witness Protection Programs, 2021, RSIL <<https://rsilpak.org/2021/criminal-justice-reform-delayed-firs-and-ineffective-witness-protection-programs/>> [Accessed on 13 May 2022]

<sup>114</sup> ibid

<sup>115</sup> Sneha Mahawar, *Witnesses protection in India – (iPleaders*. December 22, 2021)

<<https://blog.iplayers.in/witnesses-protection-india/#:~:text=The%20Witness%20Protection%20Scheme%20in,the%20State%20by%20giving%20evidence.>> [Accessed 16 May 2022].

<sup>116</sup> Waseem (n 107)

<sup>117</sup> MANU/SC/0713/2009

<sup>118</sup> Sanjeev Kumar and Abhishek Goyal, *Witness Protection: Safeguarding The Eyes And Ears Of Justice*, [2020], Mondaq, <<https://www.mondaq.com/india/trials-appeals-compensation/914274/witness-protection-safeguarding-the-eyes-and-ears-of-justice>> [Accessed 20th April]

<sup>119</sup> BomLR 3549; MANU/MH/1415/2012

mechanism to protect witnesses in sensitive issues. In a case before the Supreme Court, directions were given to the states to outline their witness protection plans.<sup>120</sup>

The Central Government, in cooperation with the National Legal Services Authority, finalized the "Witness Protection Scheme, 2018".<sup>121</sup> The scheme's goal is simple. Protect and defend the witnesses' rights in India. The Scheme also allows a police escort to the courthouse.<sup>122</sup> Among the various safeguards suggested in this Scheme are Security cameras at the witness's home. Perimeter patrols and a house check. Call logs, emails, messages, etc. Witness relocation based on threat analysis report. The witness is given emergency contact numbers.<sup>123</sup>

Witness protection in India has come a long way since the 14th Law Commission Report in 1958. Other laws, such as the Protection of Children from Sexual Offences Act 2012<sup>124</sup>, the Scheduled Caste and Tribes (Prevention of Atrocities) Act 1989<sup>125</sup>, and the National Investigation Agency Act 2008<sup>126</sup>, have also addressed the necessity to protect witnesses' rights.<sup>127</sup> In *State of Gujarat v. Anirudh Singh* (1997)<sup>128</sup> The Supreme Court declared that every witness must assist the State by testifying.<sup>129</sup> The Supreme Court held in *Swaransingh v. the State of Punjab*<sup>130</sup> (1957) that evidence is admissible in a criminal proceeding. Witnesses are crucial in providing such proof. During a trial, it is uncommon to have a witness alter his or her mind of his or her own free will. The Supreme Court of India stated in *Mahendra Chawla and Ors. v. Union of India and Ors.*<sup>131</sup> (2019) that one of the main reasons for witnesses changing their minds is a lack of sufficient security provided by the state, resulting in a threat to life. Hostile witnesses are those who testify in this way.<sup>132</sup> In *Zahira Habibullah Sheikh v. State of Gujarat & Ors*<sup>133</sup>(2006) 3 SCC 374, the

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<sup>120</sup> Ibid

<sup>121</sup> Mahawar (n 115)

<sup>122</sup> Mahawar (n 115)

<sup>123</sup> [Ishan Arun Mudbidri, Witnesses protection in India, \[2021\], iPleaders, <https://blog.ipleaders.in/witnesses-protection-india/#:~:text=The%20Witness%20Protection%20Scheme%20in,the%20State%20by%20giving%20evidence>](https://blog.ipleaders.in/witnesses-protection-india/#:~:text=The%20Witness%20Protection%20Scheme%20in,the%20State%20by%20giving%20evidence) [Accessed 24th April]

<sup>124</sup> Protection of Children from Sexual Offences Act, 2012

<sup>125</sup> The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989

<sup>126</sup> National Investigation Agency Act, 2008

<sup>127</sup> Ibid

<sup>128</sup> AIR 1997 SC 2780

<sup>129</sup> Mudbidri (n-123)

<sup>130</sup> AIR 637, 1957 SCR 953

<sup>131</sup> Ors 2018 SCC Online SC 1778

<sup>132</sup> Mudbidri (n-123)

<sup>133</sup> Ors Appeal (crl.) 446-449 of 2004

Supreme Court stated that threatening or coercing witnesses to give false testimony does not result in a fair trial.<sup>134</sup>

From the above discussion it is observed how the significance of witness protection law has been acknowledged in different countries. Starting from the UK-US to India, Pakistan and more notable countries have enacted or amended witness protection laws in their countries to smoothen the judicial proceedings in their respective territories. Some countries have enacted different Acts/Laws to ensure the witness protection while some have incorporated witness protection law in the existing provisions. They have not only ensured the protection of witnesses, but have also protected the rights of persons associated with witnesses.

#### **4.4 Conclusion**

A witness must see everything from the crime scene to the courtroom. The accused also threatens, coerces, and harasses them. Victimized witnesses suffer more. These witnesses are common targets and can be easily deceived, but their courage and strength to come out and testify can help convict those who are culpable. As a result, their protection becomes critical. Thus, they crack and become hostile. As a result, stating the existence of an effective and rigorous Witness Protection Scheme is insufficient. It is past time for the entire state to assume the role of 'parents patriae' and pass comprehensive legislation in this regard. Only then will the stream of justice be allowed to flow freely and without hindrance. The requirement of the hour is for unified and independent legislative safeguards to protect the rights of vulnerable witnesses, including harsh penalties for those who influence the witness. Thus, protecting them is very important.

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<sup>134</sup> Kumar and Goyal (n-118)

## Chapter 5

### Findings and Recommendations

#### 5.1 Findings

International Criminal Court (ICC), the International Tribunal for the former Yugoslavia (ICTY), the Extraordinary Chambers in the Courts of Cambodia (ECCC), the International Criminal Tribunal for Rwanda (ICTR), the Special Tribunal for Lebanon (STL) and the Special Court for Sierra Leone (SCSL) enacted relevant laws for the witness protection where the procedure of evidence and how the witness will be protected is established.<sup>135</sup> Not only this but the significance of witness protection law has also been acknowledged in developed countries like the UK where they have enacted a law known as Criminal Justice and Public Order Act, 1994 which states punishments for intimidating witnesses. Similarly, the US has also enacted the Comprehensive Crime Control Act, 1984 in order to provide security to the witness. Moreover, the Canadian Legal system also has the Witness Protection Program Act, 1996 to protect persons involved in assisting in law enforcement matters.<sup>136</sup>

However, if looked into the scenario of Bangladesh, Bangladesh still does not have any existing laws regarding the witness protection. Although, two reports on the witness protection have been submitted to the law Ministry by the Law commission of Bangladesh. The first one was submitted in 2006 and the second one was submitted in 2011. The report is named 'Final report on a proposed law relating to protection of victims and witnesses of crimes involving grave offenses.' In the first report the commission proposed a law in order to protect the witness and victim and in the second one the commission suggested some recommendations on the first one.<sup>137</sup> The proposed law by the commission addressed many issues in the law. They have addressed the vulnerability of the group, acknowledged some supporting mechanisms such as physical, psychological and economic wellbeing of the witness who will help the court by testifying in it.

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<sup>135</sup> Rahman & Hasan (n 3) 30

<sup>136</sup> Rahman & Hassan (n 3) 30

<sup>137</sup> Rahman & Hassan (n 3) 30

Before the law commission had suggested reforms, Bangladesh didn't have any specific law for witness protection. If looked at the Evidence Act, 1872, Penal Code 1860 and Prevention and Suppression of Human Trafficking Act, 2012 barely mentions the protection of witnesses in the territory of Bangladesh. Bangladesh is still far away from incorporating the witness protection law in its legal system. Taking into consideration the application of witness protection law in other countries, it is high time to realize and acknowledge the importance and significance this law holds. If not provided the protection, then no person will ever gather the courage to come forward and assist the law enforcement to reach to the conclusion and render justice.

#### **5.4 Recommendation and Concluding Remarks**

Bangladesh gained its independence in 1971 and since then till today it has incorporated many laws keeping track with the current times. But it is really unfortunate on part of Bangladesh that it still doesn't have its own witness protection laws. In various case laws the concern has come out how vulnerable and hostile the witnesses turn out. This situation can only be changed if certain reforms and recommendation are strongly applied in the legal system of Bangladesh.

1. Specific laws should be implemented by building separate government departments devoted specifically for protecting the rights of both the witness and the accused.
2. A strong witness protection scheme is desperately needed. The purpose should be to protect witnesses by offering them rights and benefits that allow them to testify without fear of the accused threatening or intimidating them.
3. Witness information should remain private. Moreover, the court should ensure that witnesses do not become hostile when testifying in front of the opposing party.
4. Witnesses shall be offered secure housing, relocation, identity change, counseling and financial support, transportation, sustenance allowance, medical treatment, and other amenities to assure their security and help them become self-sufficient.
5. Governing organizations should also allow witnesses to apply for protection. If the court deems it suitable, it may issue a suo-moto and forward it to the department.
6. Lastly, When the victim is the sole witness especially in rape and sexual abuse cases, then the non-disclosure of the information of the witnesses should be strictly protected and maintained. Protection may also be offered to the witness' immediate family or a person



affiliated with the witness if the family or person is in danger as a result of the witness participation in the legal processes.<sup>138</sup>

As a result, we hope that the government will establish a specific law on the protection of witnesses in Bangladesh, based on the Law Commission of Bangladesh's reports and the ruling of the High Court Division.

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<sup>138</sup> Rahman & Hassan (n 3)

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