

## Absence Of Witness Protection Is A Threat To Fair Trial As Envisaged Under The Constitution Of Pakistan, 1973

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### Abstract

Witness protection is inevitable for a fair trial, and in terms of Article 10A of the Constitution, 1973, the *fair trial* is an inalienable right of every citizen. Protecting witnesses and victims is an obligation of the state. The focus of this research is to analyze the causes of non-implementation of witness protection laws in Pakistan and their effects on the right of a fair trial. The critical elements in a criminal trial are witnesses and their testimonies, which help establish the guilt or otherwise of the accused. Pakistan follows the adversarial system of trial, which is based on two fundamental principles; firstly, that the burden of proof lies on the prosecution side and, secondly, that the accused is supposed to be innocent until proven guilty. General principles of evidence are contained in the Qanoon-e-Shahadat Order, 1984 ('QSO-1984'); however, on the matter of witness protection in Pakistan, for the first time, comprehensive legislation was introduced at the federal and provincial levels (except Khyber Pakhtunkhwa). The outcome of the reluctant approach of the public is that the suspect, even if guilty, always escapes from the criminal charge, and the system fails. Hence, it is a denial of the process and abuse of the essential entitlement to a fair trial of the victim.

**Keywords:** Fair Trial, Witness Protection, Witness Protection Law, Criminal Justice System, Witness Anonymity Order, Constitution.

### تلخیص

گواہان کا تحفظ منصفانہ سماعت کے حق کو بہتر بنانے کے لئے ضروری ہے اور آئین ۱۹۷۳ کی دفعہ ۱۰-الف کے مطابق، منصفانہ سماعت ہر شہری کا لازمی حق ہے اور گواہان اور متاثرین کی حفاظت کرنا ریاست کی ذمہ داری ہے۔ اس تحقیق کا مقصد پاکستان میں، گواہان کے تحفظ کے قوانین کے نفاذ کی کمزوری کی وجوہات اور منصفانہ سماعت کے حق پر ان کے اثرات کا تجزیہ کرنا ہے۔ فوجداری مقدمے کی سماعت کے اہم عناصر گواہان اور ان کی شہادتیں ہیں، جو ملزم کا جرم ثابت کرتے ہیں۔ پاکستان کا فوجداری نظام دو بنیادی اصولوں پر عمل پیرا ہے۔ پہلا یہ کہ ثبوت کا بوجھ استغاثہ کی طرف ہے اور دوسرا یہ کہ قصور وار ثابت ہونے تک ملزم بے قصور سمجھا جاتا ہے۔ ثبوتوں کا موجودہ

قانون گواہان کے تحفظ سے متعلق کوئی رہنمائی فراہم نہیں کرتا ہے۔ پاکستان میں گواہان کے تحفظ کے معاملے پر، پہلی بار وفاقی اور صوبائی سطح پر (خیبر پختونخوا کے علاوہ) مکمل قانون سازی کی گئی۔ عوام کی ہچکچاہٹ کا نتیجہ یہ ہے کہ مشتبہ شخص چاہے وہ قصور وار بھی ہو، ہمیشہ مجرمانہ الزامات سے بچ جاتا ہے اور فوجداری نظام ناکام ہو جاتا ہے۔ لہذا، یہ گواہان کے منصفانہ سماعت کے حق کی خلاف ورزی ہے۔

**کلیدی الفاظ:** منصفانہ سماعت، گواہان کا تحفظ، گواہان کے تحفظ کا قانون، فوجداری انصاف کا نظام، گواہان کی گمنامی کا حکم، آئین

## Introduction

State has this responsibility to establish the system and permeable environment conducive of fair and fast trial towards averting criminal offences in a country. Amongst other factors, the role of the witnesses and victims at large is of critical importance in this regard. However, as per the general perception and ground realities victims and witnesses are highly vulnerable to the harassment and coercion from the accused and their allies, which inhibit the victims from reporting a crime and witnesses from tending honest and candid testimony. As a result, the victims often escape the due punishment.

It is the primary responsibility of the state under the domestic laws of Pakistan as well as international laws to administer proper administration of justice and ensure a fair trial (Weissbrodt, 2009). Crimes have harmful repercussions on the public at large (Ormerod, 2008). Crimes are deemed to be a public wrong, injure society in general (Karim, 2003). It is the clear obligation of the CJS to control crime as it affects the quality of life (Karim, 2010). Despite resolving the complications of cases, CJS should balance the interest of the victim, criminal, and the state (Sharma, 2007). In this connection, through the 18<sup>th</sup> Amendment, the right of a fair trial was introduced in the Supreme law of the land (Abdullah, 2012). The right to a fair trial can completely be appreciated by pairing the rights of the suspect and the victim and with the rights of the general public, without bias to each and everyone (Ishaq, 2014). As per Article 8 of the Constitution, any custom and usage having the force of law or law of land, conflicts with the right of a fair trial, would be annulled (*PLD 2012 Supreme Court 553*, 2012). Any hearing before a Court of law in which evidence is recorded is part of the process of a Trial (Mahmood, 2012). Evidence is the basis of a criminal case, and every case has to be looked into on the basis of evidence recorded in the case (Varinder Singh, 2016). Every statement of a witness is powerful enough to sway the course of the entire case (Malik, 2014). Facts of the case are brought before the court through witnesses and documents in order to arrive at a logical conclusion (Karim, 2003). Essentially allowing the court to sift the grain from the chaff (Parveen Gul & Bahadar Ali, 2015).

The prosecution of crimes and the process of investigation, serious or not, is subject to the assertion and authentication of witnesses (Karim, 2003). Hence, witnesses are the chief ingredient of the fruitful administration of the criminal justice system (CJS) (Malik, 2014). Nevertheless, witnesses, victims, and their families face a number of challenges from day one of the investigation and the trial period proves to be the most problematic for them (A. Sharma, 2019). Witness protection is indispensable for a fair trial. Protecting witnesses is an obligation of the state. Gholasi and Ghaziani (2014) are of the view that the lack of witness protection results in denial of justice. If the state provides protection to witnesses, they are encouraged to adduce evidence before the Presiding Officer for the administration of justice and resulting in a fair trial (Kaur, 2011). Without an iota of doubt, it is an unquestionable fact that active witness protection system program helps in the fight against crime, all over the world (Mackarel et al., 2001). Therefore, to improve the justice delivery system, there is a need to implement an appropriate and effective witness protection policy in the country (A. Sharma, 2019). Witnesses do not offer to give statements out of terror and because of annoying Court processes and lack of financial, social, legal, and psychological help (Glušćić & Europe, 2006). The main rationale towards the apathy of witnesses, which connected to a low conviction percentage in Pakistan, is the absence of a witness protection program (Tanoli, 2015). An international instrument called UNTOC (The United Nations Convention Against Transnational Organized) contains provisions on the theme of witness protection (Jan, 2019).

To fill this gap, various laws were enacted from time to time at Provincial levels and Federal levels. The “Witness Protection, Security and Benefit Act, 2017” is the Federal enactment on the issue of Witness Protection in Pakistan, applicable to all areas in the Federation including those, which are not covered in any Provincial laws (Pakistan, 2017). In the year 2013, the Sindh Assembly enacted “the Sindh Witness Protection Act, 2013” (S. The Provincial Assembly, 2013) and “the Balochistan Witness Protection Act, 2016” is for the safety of witnesses in the jurisdiction of Balochistan (B. The Provincial Assembly, 2016).

In the Province of Punjab, the Punjab Witness Protection Act (PWPA), 2018, passed on 24 May 2018 (P. The Provincial Assembly, 2018). However, Khyber Pakhtunkhwa (KPK) province has not introduced an exclusive law on the topic of witness protection (Adil, Kamran, 2017). A report published by UNODC on KPK confirms the same fact (UNODC, 2018). It would not be irrelevant to mention that Section 29 of the SWPA, 2013, Section 29 of the BWPA, 2016, and Section 12 of WPSB Act, 2017 empowers the concerned Governments to make rules to accomplish the purposes of said Acts (Ali, 2014). However, the Governments have failed to frame any rules in light of the relevant Acts. Court under Section 21 of ATA, 1997 is authorized to pass an order for the protection of witnesses and

persons, public prosecutor and judge if they are associated with any court case (Balli, 2018).

In addition to the above, a new section 21-AA was inserted through the Anti-Terrorism (Amendment) Act, 2018 for the safety of Judges, prosecutors, witnesses and other concerned persons involved in proceedings of cases registered under the Anti-Terrorism Act, 1997 (Senate, 2018). Statement of Objects and Reasons of the Anti-Terrorism (Amendment) Act, 2018 are reproduced as under:-

*“In order to make effective provision for the protection of witnesses and persons concerned with the trial of Anti-Terrorism cases. Witnesses don't feel intimidated, harassed and coerced whilst giving their testimony and are able to testify without being apprehensive of their security”* (Senate, 2018).

Against this backdrop, this paper contributes to a better understanding of the challenges and their root causes inhabiting the protection to the victim and witnesses at large, so that the Government authorities can understand the causes of non-adherence of witness protection laws in Pakistan, and it will be helpful for future research in the field.

### **Study Objectives**

- The goals of the study are as follows –
- To evaluate the existing laws of witness protection enforced in Pakistan and how these affect the fair trial.
  - To explore the underlying causes for non-implementation of Witness Protection laws in Pakistan
  - To make recommendations on improving the implementation of these laws.

### **Research Questions**

Whether a lack of witness protection in Pakistan affects the fair trial and criminal proceedings or not.

If we protect witnesses, would that increase the conviction rate and how it will effect on CJS?

In what ways the enforcement of the law for the protection of witnesses lacks.

### **Review of Literature**

Relevant literature in the international as well as local contexts was referred to in order to assess the gaps in the ongoing witness protection laws and practices in Pakistan. A brief recap is appended for the reference of valued readers: -

The basis of the right to a fair trial is given in the UDHR (“Universal Declaration of Human Rights”) issued by the United Nations (UN, 1948). Every citizen is allowed to this fundamental right, and it is universally acknowledged by all the institutions (Chilea, 2010). In our jurisdiction, the proposition of Fair Trial was introduced in the year 2010 it read as

*“Article 10A Right to Fair Trial For the determination of his civil rights and obligations or in any criminal charge against him, a person shall be entitled to a fair trial and due process”* (Shaukat, 2017).

There is no direct section of the law on witness protection in the Pakistan Penal Code 1860 (‘P.P.C.’) and the Criminal Procedure Code 1898 (‘Cr.P.C.’). Cr.P.C. gives the procedure of criminal trial before the courts, but it does not define the term ‘trial’ (Mahmood, 2013). It refers to judicial proceedings, which conclude either in conviction or acquittal of the accused. Articles 150 and 151 of the QSO-1984 deals with the situations, when witness become hostile (Karim, 2010). In case a witness becomes hostile for any reason (lack of witness protection etc.), the party calling him may, subject to permission of the court, impeach his credit by subjecting him to cross-examination under Article 151 of QSO, 1984 (Mahmood, Shaukat, 2012).

In the year 2010, the Concurrent Legislative List (Fourth Schedule) was abolished from the Constitution, devolving the subjects therein to the provinces. However, “criminal law”, “criminal procedure,” and “evidence” remain concurrent under newly inserted Article 142(b) of the Constitution. Resultantly, since both the Federal and the Provincial Government can legislate on these subjects, it is important that the Federal Government restrain itself from encroaching in the domain of the Provincial Government (Shaukat, 2017). It is appropriate to mention here that the Anti-Terrorism Act, 1997 has provisions for the protection of witnesses, but there is a necessity for a full-fledged special law on witness protection (Parveen Gul & Bahadar Ali, 2015).

As per the online Cambridge Dictionary, Witness Protection means the “Methods of protecting someone who may be in danger as a result of agreeing to tell the courts or police what they know about a crime” (Cambridge University Press, 2020).

Witness or a participant as per UNODC publication (UNODC, 2008) means: “Any person, irrespective of his or her legal status (informant, witness, judicial official, an undercover agent or other), who is eligible, under the legislation or policy of the country involved, to be considered for admission to a witness protection programme”;

The word protection is defined in the Sindh Witness Protection Act, 2013 as: “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(S. The Provincial Assembly, 2013)”

The Federal law on the subject, “The Witness Protection, Security and Benefit Act, 2017” defines a protected person as “Any person who has been placed under protection for the purpose of this Act” (Pakistan, 2017).

The Hon’ble Apex Court of law in the case as *PLD (All Pakistan legal decisions) 2011 Supreme Court; Page number 997* have a number of observation/ statements that,

“It is for the legislature to provide processes for the protection of witnesses, policemen, and judges and for the executive/government to fully implement these reforms. In view of the acute law and order situation prevailing in Karachi, a change in the mindset for improving the investigation and introducing the witness protection system is called for. no witness protection program is available in Pakistan (*Watan Party v. The FoP*, 2011).”

It was held that,

“The Provincial Government/Executive must provide protection to the witnesses so that they may depose against the perpetrators of crimes without any fear, enabling the courts to decide cases against them in accordance with law(*Watan Party v. The FoP*, 2011).”

In the year 2013, the Sindh Assembly enacted the Sindh Witness Protection Act, 2013 with aim to encourage witnesses by protecting them and their families through Witnesses Protection Programme, so that they may be enabled to play their role in criminal proceedings, without fear (Bashir, 2019). This is the first such law in the legal history of Pakistan. The Chief Witness Protection Officer shall head the Witness Protection Unit (“WPU”) established under the Sindh Witness Protection Act , 2013 and WPU is to facilitate and implement the Witness Protection Programme (“WPP”) for the safety and protection of protected persons. Additional Inspector General of Police, CID Sindh will be appointed as Chief Witness Protection Officer (“CWPO”) and the CWPO is empowered to take steps for the safety of witnesses. The government may appoint Witness Protection Officers, who shall assist the CWPO and exercise such powers conferred upon, assigned by the CWPO(Ali, 2014).

The CWPO shall follow up on the report of the concerned Witness Protection Officer and Committee of officers consisting of (i) DIG concerned range (ii) DIG

Head Quarters (iii) Additional IGP Special Branch, and (iv) Representative of Home Department, Sindh. Witness Protection Unit shall lay down the structure and operating procedure for the security of threatened witnesses on behalf of the Government (S. The Provincial Assembly, 2013).

Further, WPU shall create and preserve the eligibility standards for admission and elimination from the program. Protection agreement is the condition precedent for the entitlement of benefits available under the law. The agreement shall also put certain conditions on the protected person, e.g. to give evidence, to meet all legal obligations, to refrain from doing any activities which may harm the life and security of the protected person. For concealment of old identity, witness protection order of the court of law is required, court is empowered to issue an order on the application filed by the unit to update / change / modify the entries in the register of births, death, and marriage, as the case may be, in respect of the witness (Ali, 2014). Any party aggrieved from the order may approach the High Court within thirty days of receipt thereof (S. The Provincial Assembly, 2013). An Advisory board shall formulate the witness protection policies, oversee the administration and approve the budgetary estimates of the WPU. A CWPO has powers to terminate the protection and assistance of protected persons on its own or on an application of the witness (S. The Provincial Assembly, 2013). Termination letter must be in writing and on the following grounds (i) witnesses deliberately violate the terms and conditions of the agreement relating to protection program, (ii) circumstances demanded so, (iii) protection was obtained based on false statements, and (iv) no more threat exists. WPU shall notify the decision to witness; anybody who is not satisfied with any order of CWPO may apply for the review, to the Government (Ali, 2014).

The Balochistan Witness Protection Act, 2016 was enacted in April 2016; it applies to the whole of Balochistan. The goal of the law is to provide protection to witnesses who record their statements in criminal cases (B. The Provincial Assembly, 2016). Home Department of Government of Balochistan shall run the WPP and undertake necessary arrangements, e.g., a facility of video conferencing, accommodation, transport, and compensation. The Minister of Home Department chairs the advisory board. The Additional Inspector General (CID) as secretary to the Board and the Chief Witness Protection Officer is incharge of deciding the inclusion of a witness in the program (B. The Provincial Assembly, 2016).

There are different stages of criminal cases, the Witness Protection, Security and Benefit Act, 2017 covers all the stages, e.g., the investigation, inquiry, and trial of serious offenses and further, the government shall constitute a Witness Protection Advisory Board, which will advise the Witness Protection Unit (WPU)(Pakistan, 2017). The WPU will implement the Witness Protection Programme established

by the Federal Government for the welfare or wellbeing of witnesses. The persons desirous of taking benefits/protection under this act have to sign a Memorandum of Agreement that stipulates responsibilities of the protected witnesses. In case the protected person fails to adhere to the agreement or becomes non-compliant the protection, subject to notice and reason, stands terminated. All proceedings are confidential, and a breach of confidentiality is a punishable offense (Pakistan, 2017).

In the Province of Punjab, the Punjab Witness Protection Act, 2018, was passed on 24 May 2018. There are two units for the protection of witnesses. Unit-I deals with the offenses of terrorism, and Unit-II deals with other serious offenses (P. The Provincial Assembly, 2018). As per Section 15 of the PWPA, 2018 trial can be held in jail, in case the Government and Court are pleased so to do, rather than in a courtroom. There is a bar on reporting of criminal proceedings with respect to serious offenses e.g., terrorism or a sexual offense on all kinds of media aiming to safeguard the data of a witness from diminishing. The court can make a Witness Anonymity Order for protection of witness or as a preventive measure for the protection of any damage to property. Violation of any terms and conditions of the Witness Anonymity Order is an offense under PWPA, 2018. Punishment can be sentenced, which might spread to three years with fines up to five million rupees (P. The Provincial Assembly, 2018)

### **Research Methodology**

This study is based on quantitative and qualitative methodology, using a non-probability purposive sampling approach. Controlled interviews using a structured questionnaire, of the critical stakeholders of more than 25 individuals representing the Criminal Justice System of Pakistan in Karachi were conducted in this regard, in person. The interviews were focused on gathering considered opinions on the following issues, namely; - (i) Right to fair trial; (ii) witness protection system in vogue; (iii) if lack of effective witness system is inhabiting fair trial; (iv) challenges in effective implantation of witness protection system; (v) expected benefits of improving the witness protection.

### **Geographical Description of the Study Group**

Primary data were collected from all major associated legal and judicial establishments located within the city of Karachi, to name a few; - Judicial officers; Office of the District Public Prosecutor located in Districts of East, South, West, and Central; Law and enforcement Agencies including investigation officers; and, Practicing Lawyers on the criminal side.



## Population Size

Pakistan Criminal Justice System that includes Courts, Prosecutors, Police and Lawyers form the universe of our study. The target population or respondents were selected amongst the experts in the field of criminal law have been representing criminal law in various capacities in the Karachi area. Such as, adjudicating criminal cases on behalf of the government; those conducting prosecution on state's behalf; those who investigate the criminal cases on behalf of the state; and, the legal practitioners representing victims and suspects before the court of law. These respondents have been chosen as they are key players in upholding a criminal trial, and they have proficiency in the criminal law.

**Table: 1.1**  
**Criteria for selection of respondents and distribution**

<b>Area of Practice/Nature</b>	<b>Description</b>	<b>No of Respondents</b>
Criminal Side of Litigants	An advocate of Supreme Court or High Courts having more than 09 years professional experience in handling criminal cases.	10
Criminal Side on behalf of government	Prosecutors appointed by government having more than more than 05 years of experience in representing State before Criminal Courts.	5
Criminal Side (Adjudication)	Judicial Officers having more than 5 years of experience in deciding cases and applications of criminal nature.	5
Investigation of Cases	Officers of LEAs, having more than 5 years of experience in investigation of criminal cases.	5
<b>Total</b>		<b>25</b>

## Sampling Methodology and Sample Size

As mentioned above, the sample size was determined by those who were expected to provide details being sought. Non-probability purposive sampling was used. Within purposive sampling, we adopted the expert sampling approach to select the respondents of the study. This approach permits the researcher to select the respondents according to defined criteria. In order to gain comprehension of the phenomenon under study, the researcher adopts this sampling technique. We designed and conducted a survey on a sample size of 25 respondents amongst the legal fraternity, to ascertain the validity of our proposition.

## Data Collection Methods

Primary data for the research was gathered from the leading respondents drawn from the Office of District Public Prosecutor located in District East, South, West and Central, Law and enforcement Agencies including investigation officers, Practicing Lawyers on the criminal side. Interviews were largely used as it facilitated an interchange with the researcher and the participant with a clear aim of gathering data. During the interview meetings, the researcher attempted to gain the participants' interpretation and perspective of the proposition. Open-ended questions were asked to the informants to narrate their knowledge and experiences. The researcher was free to examine the participants for more intensive understandings.

## Results

The objective of this study was to evaluate the existing laws of witness protection enforced in Pakistan and how it affects the chances of fair trial. Underlying causes for non-implementation of Witness Protection laws in Pakistan and to suggest recommendations. Data for this research was gathered from 25 key respondents who personally face witness protection issues in various scenarios. The sample was by and large male-dominated with 80% of the informants being male respondents and the balance of 20% being female. The gender distribution is shown in Table 1.2.

**Table: 1.2**  
**Gender distribution**

<b>Category</b>	<b>Frequency</b>	<b>% of the Total</b>
Male	20	80%
Female	5	20%
<b>Total</b>	<b>25</b>	<b>100%</b>

The respondents were drawn from the Office of District Public Prosecutor located in the District East, South, West and Central, Law and enforcement Agencies including investigation officers, Practicing Lawyers on the criminal side. The researcher spent plenty of time at these offices, identifying leading informants who were connected with the Criminal Justice System and had extensive discussions with key informants (Peruse Table 1.3 below).

**Table: 1.3**  
**Key players of the criminal justice system**

<b>Respondents Role in Criminal Justice System</b>	<b>No. of Respondents</b>	<b>% of the Total</b>
Adjudication	5	20%
Investigation	5	20%
Prosecution	5	20%
Litigation	10	40%
<b>Total</b>	<b>25</b>	<b>100%</b>

A large number of respondents had experience in criminal litigation. All respondents had more than 2 years of professional experience in essential fields under review, with a range of informants (76%) having over 6 years' experience group. The results are tabulated in Table 1.4 below.

**Table: 1.4**  
**Distribution on the basis of experience**

<b>Years of Experience</b>	<b>Number of Respondents</b>	<b>% of the Total</b>
0 – 2 years	01	4%
3 – 5 years	05	20%
Over 6 years	19	76%
<b>Total</b>	<b>25</b>	<b>100%</b>

a. Role of the Witness Protection Program

Majority of respondents (84%) agreed to the fact that a comprehensive and fully implemented witness protection program is definitely imperative for ensuring the fair trial. Nevertheless, (16%) respondents believe that the fair trial may not be affected by the witness protection program (See Table 1.5 below).

**Table: 1.5**  
**Implementation of witness protection program**

<b>Witness protection and right to fair trial</b>	<b>No. of Respondents</b>	<b>% of the Total</b>
Yes	21	84%
No	4	16%
<b>Total</b>	<b>25</b>	<b>100%</b>

b. Whether lack of protection of the witness program is discouraging witness to come forth

Respondents overwhelmingly of (88%) respondents agreed that the lack of witness protection program does create disabling environment for the witnesses to come forth or to give fair witness. A nominal size of respondents i.e. (12%) disagreed for reasons unknown. This poses a real threat to fair trial and the results are tabulated in Table 1.6 below.

**Table: 1.6**  
**Lack of witness protection program**

<b>Lack of witness protection discourse witnesses</b>	<b>Number of Respondents</b>	<b>% of the Total</b>
Yes	22	88%
No	3	12%
<b>Total</b>	<b>25</b>	<b>100%</b>

c. Lack of witness protection in Pakistan affects the fair trial and criminal proceedings

Majority of respondents (96%) agreed to the proposition that a lack of witness protection in Pakistan affects the fair trial and criminal proceedings. Nevertheless, (4%) respondents believe that it will not affect the fair trial and proceedings (See Table 1.7 below).

**Table: 1.7**  
**Witness protection and fair trial**

<b>Witness Protection and law and order condition in Pakistan</b>	<b>No. of Respondents</b>	<b>% of the Total</b>
Yes	24	96%
No	1	4%
<b>Total</b>	<b>25</b>	<b>100%</b>

d. Witness Protection and law and order condition in Pakistan

Once again the majority of the respondents i.e. 22 out of 25 agreed to the proposition that if we create the system/policy for witness protection, would that help to control the law and order condition in Pakistan. However, 3 respondents disagreed with the proposition (See Table 1.8 below).

**Table: 1.8**  
**Witness protection and law & order situation**

<b>Witness Protection and law and order condition in Pakistan</b>	<b>No. of Respondents</b>	<b>% of the Total</b>
Yes	22	88%
No	3	12%
<b>Total</b>	<b>25</b>	<b>100.0%</b>

- e. In what ways the implementation of the law for the protection of witnesses lacks?

Apart from responding to structured questions regarding the proposition, they were given a chance to give their general opinion on how to improve the existing criminal justice system. Some pertinent suggestions were made by the respondents who are clustered under the fewer heading as follows. See below; -

- i. Crime witnesses and victims are fully exposed in our system to the accused and other potential threats: Their identities and those of their families must be protected.
- ii. Witnesses are most vulnerable on the routes to and from the court where they can be and often are, easily targeted by criminals.
- iii. Trials are extended into years.
- iv. The government is not serious about implementing the witness protection system.
- v. Support from Government.
- vi. The witness does not have due protection for himself and his family against criminals.
- vii. The witness is often not afforded leave from work and provided traveling expenses to reach to the court.

Findings from the study reveal that a full-fledged witness protection program is imperative in improving the chances of the fair trial and increasing the percentage of conviction. The sum and substance of our research findings are that one of the major impediments for non-implementation of witness protection law is that the concerned department /government has not framed the rules for the enforcement of the witness protection laws, as envisaged under the law. Non-confidence of the public at large on the existing criminal justice system is due to complex court procedures. Non-allocation of separate funds for running of the witness protection program in Pakistan. Lack of awareness about witness protection law also makes the law non-functional. The gaps identified above, due to non-implementation of witness protection laws affect all citizens, whether they are litigants or otherwise, as well as the entire criminal administration justice system. Hence,

the witness protection system is the harmonization of an accused person's right to a fair trial with witnesses' wellbeing.

## **Discussion**

The goals of the instant study were to apprise the laws of witness protection enforced in Pakistan and to explore the core bases for non-implementation of laws relating to witness protection and their effects on fair trial.

### **I. Role of Witness Protection Program**

84% respondents agreed to the fact that a broad and fully implemented witness protection program is definitely vital for ensuring fair trial. During the interviews it was revealed that in order to improve the efficacy of criminal justice system, all we need to bridge the gaps relating to witness protection in Pakistan. The same facts are endorsed by (Malik, 2014). A senior lawyer during the interview mentioned that we need physical facilities for all the key witness like escort services and safe houses.

### **II. Lack of protection of witness program and their effects**

88% respondents agreed that lack of witness protection program does create the disabling environment for the witnesses to come forth or to give fair witness. Various factors were attributed to have affected in this regard, i.e. Witnesses in Pakistan are in dire need of strong protection. This is because of that fact that, that our Criminal Justice System has aptly focused to protect the rights of accused, but the rights of witnesses have been ignored. The witness seems to be helpless when he approaches the Court to lend his testimony as also observed by the Apex Court (*Watan Party v. The FoP*, 2011).

### **III. Fair trial and criminal proceedings**

96% respondents agreed to the proposition that a lack of witness protection in Pakistan affects the fair trial and criminal proceedings as our CJS is based on the witness's testimony and statements and they believe that if the witnesses are compelled to give false evidence or get threatened that would not result in a fair trial as suggested by (CHILEA, 2010; Parveen Gul & Bahadar Ali, 2015)

### **IV. Law and order condition and role of witness protection**

88% respondents agreed with the proposition that if we create the system/policy for witness protection, that would help to control the law and order condition in

Pakistan. All over the world, reliable and effective protection programs have proven their value as a vital tool in combat against offences(S. Sharma, 2007).

#### V. Implementation of law

Respondents suggested that in order to improve the chances of a fair trial it is the duty of state to implement law in letter and spirit and the concerned Governments to make rules to accomplish the purposes of all the enactments. Our respondents overwhelmingly supported this fact that even where the “Witness Protection Laws” are available in Pakistan, the implementation of the same in letter and spirit is grossly lacking(Tanoli, 2015; UNODC, 2008). One senior prosecutor suggested that if the state fails to fund the protection program, it would lead to loss of confidence by the victim and witness to appear against offenders. Suitable and consistent financial support should be assumed by government accounts to ensure the programme’s sustainability and the accessibility of funds for the period of safety of the victim and witness. An investigation officer informed us that there are a number of cases in which customs prohibit women to offer testimony and appear in court.

In the backdrop of the findings of study and literature review, we have the basis to establish that: Fair trial is denied in many instances due to lack of witnesses, which in turn is the outcome of lack of effective protection afforded to the genuine witnesses of the crime.

#### VI. Limitation of study

Limitation of study is as follows (i) data/statistics related to the lack of witness protection implications on the Criminal Justice System and similar papers are not available. (ii) There is not a noteworthy research which critically analyses existing witness protection laws and its role in upholding the fair trial guaranteed under the Constitution and criminal practices.

#### VII. Future Research

During the research we have noticed numerous issues relating to the witness protection system, which may be considered for future research:-

- Public confidence on the CJS of Pakistan
- Rights of the offender and the rights of the victim
- How cultural diversity influence the implementation of witness protection in Pakistan
- How geographical/ regional diversity influence the implementation of witness protection in Pakistan

## Conclusions

We have the basis for concluding that it is the primary duty of the State/Government to make sure the wellbeing and protection of every citizen as crimes are deemed to be a public wrong, injure society in general. Based on study findings, we conclude that gaps exist in the implementation of Witness Protection Laws in Pakistan and despite various enactments on the subject, Witness Protection Programs in Pakistan not established as envisaged by the law.

Witnesses and victims are not willing to offer evidence is due to a lack of will on the part of the victim and witnesses, and this lack of will is due to threat to life, induced by compulsion violence, coercion and other means and the lack of proper protection by the concerned government results in violation of basic fundamental rights. (*Watan Party vs. FOP*, 2011)

Developed countries have realized that without providing protection to witnesses and victims of a crime, quality of the criminal justice system cannot be improved (S. Sharma, 2007). CJS should balance the interest of the victim, criminal, and the state, as also suggested by (A. Sharma, 2019). It is an ongoing process that needs to be institutionalized and made a component of the justice system of the country, as also suggested by (Arifi, Kadri, 2015).

It is indispensable in order to guarantee the impartiality of witness protection measures that it must be executed by independent entities other than the agency conducting the prosecution or investigation. Advantages of creating and implementation of the system is that Witness Protection laws will not only help the prosecution in bringing criminals to justice and improve the chances of the Fair Trial as proposed under the Supreme law of the land i.e. Constitution, 1973. By the combination of the rights of the suspect and the victim and with the rights of the general public, the right to a fair trial can completely be appreciated (Ishaq, 2014).

## Recommendations

It is believed that the witness protection program can be improved by considering the following suggestions and recommendations:

- a. The protection of witnesses would remain a pipedream without implementation and enforcement of the laws in letter and spirit.
- b. The simplification of Court procedure will not only improve the justice system but also strengthen it resulting in greater ease and convenience for the public.
- c. An identification of the reasons and causes behind the reluctance of the people to become witnesses is necessary.



- d. For the smooth functioning and operation of the witness protection programme funds are required.
- e. Role of Judicial Academies to conduct training and awareness session on the Witnesses Protection Law.
- f. As a specialized global agency, the UNODC's experience should be utilized. It is already working extensively with the government at different levels.
- g. With the use of modern devices and technologies, statements of the accused, witnesses and prisoners from the prisons can easily be recorded in a sophisticated yet safe manner.
- h. For enhancing the efficiency and effectiveness of the Witness Protection Program, continuing legal education for Witnesses Protection Officers is imperative.
- i. Witness protection laws must be included in the syllabus of LL.B.
- j. Program related to witness protection must be executed by independent entities other than LEAs.

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