NEED FOR WITNESS PROTECTION PROGRAM: IN PAKISTAN IN GENERAL, AND IN KHYBER PAKHTUNKHWA IN PARTICULAR

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Abstract
A 'witness' is an imperative aid in the administration of Criminal Justice System. Witnesses perform a significant role in assisting the court of law in all the stages of a criminal proceeding in order to decide the innocence or guilt of an accused person. If no protective measures are taken in order to protect the witnesses and their families against such threats then many persons would be reluctant to collaborate with the authorities and in this way Justice System would be paralyzed in most of the cases. Need of the study arises when we see that there is no such protection program in Khyber Pakhtunkhwa to protect the witnesses in critical cases. Absence of such programs/laws has aided in strengthening of the offenders and criminals for reason that in the absence of witness protection program, the witnesses turn hostile which further complicated the situation. Therefore, enacting witness protection laws, in Pakistan in general and Khyber Pakhtunkhwa in particular, is need of the hour.

Key Words: Witness; Witness Protection Program; Legislation; Khyber Pakhtunkhwa.

Introduction
Witnesses are the basis of a well-established Justice Delivery System. Their cooperation with judicial authorities and the law enforcement agencies is necessary in order to prosecute criminal proceedings successfully. The role of witnesses in an adversarial system is specifically important because the prosecution has to prove the case with leading evidences in the way of oral examinations, which can be then

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questioned by defense lawyers at a public hearing (Mackarel, M., Raitt, F. E., & Moody, S. R. 2001). By deposing witnesses in cases, they provide assistance to the courts in finding out the truth/reality. But a common thing which is now-a-days happening in a Criminal Justice System is that witnesses are turning hostile. The key factor which is responsible for it is witnesses’ intimidation or threat to their lives due to which they retract from their previous statements during trials.¹ Threat to witnesses or their families is not the only factor for them to turn hostile but still it is one of the most important factors. There would definitely be other factors due to which they turn hostile such as reluctance, inconvenience, favoritism etc.² which this article does not purport to deal with at length. Protection of witnesses and their families from physical threat or intimidation is therefore an essential requirement to uphold and maintain the rule of law. Witness Protection Program is viewed as a key tool to combat crimes. Such specialized programs have been established or detailed legislations have been developed by a number of foreign jurisdictions but Pakistan particularly Khyber Pakhtunkhwa lacks such a protection program.

The present study has been undertaken to highlight the need of witness protection program and to give some practical suggestions and recommendations for an effective witness protection program in Pakistan in general and in Khyber Pakhtunkhwa in particular.

**The Concept of Witness**

Generally speaking ‘witness’ is a person who sees something or a person who procures a sense of knowledge and information about the event. The concept of witness is so extensive that it involves those who simply attest to legal documents to those who testify in a court of law. Thus the definition of a witness will vary, depends upon the situations of each and every case. Black’s Law Dictionary defines witness as “A person who vouches, sees or knows for something, or a person who provides evidence under an oath or an affirmation in person, by written or oral deposition or by an affidavit.”³

Section 2 (n) of the Sindh Witness Protection Act 2013 defines a witness as “A person who has given or agreed to give testimony, or has made a statement relating to the commission of offence(s).”² Relating to the
criminal proceedings, a witness means “A person who is called or is intended to be called to provide testimony in trial or at hearing in question.” It can also be defined as “Any person possessing information of fact(s) which has to be determined in a criminal proceeding, or is summoned by judicial authorities to give evidence on that particular fact(s) (Gluščić, S. 2006).

A witness giving testimony in a court of law can be categorized according to the role played by him/her such as victim-witness, expert-witness, and justice collaborator.

The Concept of Witness Protection
Based on the Principle “No one is bound to reveal or wallet while charges”, the accused person should not give threats or intimidation to witnesses to give testimony in favor of him. Protection of witnesses is a significant tool for acquiring evidence. The fear and reluctance of witnesses to give testimony in a court of law has been caused to a large extent by intimidation and threats which is imposed on them by the accused persons. This has needed the establishment of program ensuring the protection of witness. Witness protection program has been defined by Vermeulen as “It is a program which is regulated by the legislation, intended to protect the witnesses and victim in all cases of severe threats that cannot be addressed by any other protective methods, and where evidences are of much importance for the criminal proceeding (Gluščić, S. 2006).

The International Criminal Tribunal for Rwanda (ICTR) Rules and Statutes explicitly provided for the protection of witnesses. The General rule which governs the witness protection states that “Appropriate measures may be order by a judge for the protection ad privacy of witnesses and victims provided that such protection methods are consistent with rights of the accused.” However such protection measures may be given only in exceptional situations to witnesses or victims whose lives may be at threat.

The Concept of Witness Protection Program
Witness protection program is “A formally established covert program which is subjected to strict criteria for admission that offers for the
change of identity and relocation of a witness whose life is threatened by the accused/criminals for reason that they cooperate with the law enforcement agencies” (United Nations Office on Drugs and Crime, 2008).

**Witness Protection Programs in various Countries**

**United States of America**

The United States Federal Witness Security Program also known as the Witness Security (WITSEC) Program is the most advanced Witness Protection program amongst all prevailing Witness Protection Programs in the world. The main object of this program is to safeguard witnesses so that they can easily testify at trials.

**Australia**

The Witness Protection Program established under the Witness Protection Act 1991 is a tremendously widespread program in Australia. The express enclosure of changed identities as well as particular guidelines to change the identities of witnesses with respect to marriages, births and deaths etc. are tremendous provisions provided under the said Act.

**United Kingdom**

The Criminal Justice and Public Order Act 1994 enacted by the U.K Government provides punishment for witnesses’ intimidation. Section 51 of the said Act provides not only for protection of witnesses during trial but it also provides for the protection of those persons who is helping with or could helping with the investigation of crimes.

Along with this Act, Sections 16 to Section 33 of the Youth Justice and Criminal Evidence Act, 1999 stipulates the courts to look into the specific methods for protection of intimidated and vulnerable witnesses. The Coroners and Justice Act, 2009 provides for the procedures for application of Witness Anonymity Orders. Witness Anonymity Order safeguards that stipulated measures are taken relating to witnesses in any criminal proceeding in order to safeguard their identities from revealing (Halsbury, H. S. G. 1987).
Republic of Korea
There exists a Witness and Victim Protection Law 2000 in the Republic of Korea which provides for the protection of witnesses, victims and their families.

Japan
Japan has developed an extensive Witness Protection Program enacted under the Criminal Procedure Code. According to section 96 (4) read with section 89 (5) of the said Code, the bail of the accused person may be rejected if there exist a rational ground to believe that the accused may intimidate, or may hurt the witness or victim or their relative actually, or damaged property of a witness or victim or their relative.

Philippines

Queensland
The Witness Protection Program in Queensland is administered by the Crime and Misconduct Commission. It provides for protection of persons who are eligible under the Witness Protection Act, 2000.

South Africa

Hong Kong
Hong Kong has established the Witness Protection Program under Witness Protection Ordinance (67 of 2000) which provides for protection of witnesses against intimidation or threat.

Canada
Canada has been enacted Witness Protection Program Act, 1996. It provides for the protection of witnesses.
Witness Protection Program: Developments in Pakistan

Witnesses in Pakistan have generally remained vulnerable to threats and exploitation – a major drawback in delivering justice. Although a provision for the protection of witnesses does exist the Anti-Terrorism Act 2007 in Pakistan, the men at helm of affairs in successive regimes have miserably failed in providing the much desired safety and relocation under new identities to people whose testimonies before the courts could have helped the state to prosecute innumerable criminals and terrorists. It can thus safely be assumed that Pakistan still features prominently among nations that do not ironically have any effective witness protection program in trials against organized crime and terrorism.

Forced disappearances and killings of witnesses, non-provision of pseudo-identities for them, no arrangements to modify their voices and shield them through screens or curtains etc. have already led to the acquittal of some of the most feared criminals and terrorists because Pakistani court judges and country’s criminal jurisprudence value testimonies from eyewitnesses perhaps a little more than what most legal systems around the world do.

A research which is conducted by the Geo Television Network and the Jang Group discloses that countries like China, United Kingdom, India, United States of America, Sweden, Israel, Thailand and Latin America etc. are miles ahead of Pakistan when it comes to guarding people who have legitimate fears once they commit to testify before the arbiters. The rate of organized crimes and terrorism in Pakistan need the protection of witnesses. In today’s scenario in Pakistan, the Province of Sindh enacted the Sindh Witness Protection Act 2013 to address this issue.

Such legislation is equally required in the whole country and in province of Khyber Pakhtunkhwa as well. Although Sindh is the first province which has taken initiative to enact such legislation but the process of its implementation leaves much to desire. The witnesses’ anonymity and the balancing prosecution’s interest in protection of witnesses and the accused’s rights are the first and the most important problem. In the context of Pakistan providing new identity and relocation of a witness seems impracticable for the following reasons:
a) It involves enormous costs to change the identity and relocation of witnesses and/or their families to protected areas. Assistance in terms of employment, housing etc. till the witnesses becomes independent is much costly.

b) The police personnel responsible for running witness protection program are often accused of intimidation of witnesses and corruption.

c) A clean surgical removal of the witnesses and their families may sometimes not be possible due to the extended families/relatives/attendant and social obligations, and may often compromise the secrecy which is required for successful implementation of a witness protection program. For instance, a question arises as what would happen to the inheritance’ rights of witnesses who are given new identities? Would the state take the responsibility to compensate a protected witness in case of his loss relating to inheritance rights in a particular property? What would be the limits of the compensation which is expected by a protected witness?

**Witness Protection Program in Khyber Pakhtunkhwa: Need of Hour**

It is important for us in today’s scenario to come up with an effective justice system which provides sufficient guarantees to the witnesses. There exists no law in the province of Khyber Pakhtunkhwa for the protection of witnesses. Neither a law has been enacted yet nor has even a system been set up by the government of Khyber Pakhtunkhwa for giving protection to witnesses. There exist two comprehensive aspects to the need of Witness Protection Program in Khyber Pakhtunkhwa:

1. To safeguard the testimony of a witness from risk of hostility.
2. To get rid of witnesses’ mental and physical vulnerability. Thus any law which is made for the protection of witnesses must consider both the points.
Conclusion, Suggestion and Recommendations

Conclusion
A successful investigation and prosecution depends upon the willful cooperation of the prosecution and the defense witnesses. The foundation of the administration of justice relies upon those witnesses who come forward and give testimony in a court of law without intimidation, favor or threat. If witnesses are deposing for favor or under threat, it may weaken the basis of the administration of justice. The statutes in Pakistan including the Qanoon-e-Shahadat Order 1872, the Criminal Procedure Code 1898, and the Pakistan Penal Code 1860 provides for the general procedures relating to adjudication of a criminal case.

Although, there exists many laws and statutes which prevails in Pakistan to punish the criminals but there exists no law till date for protection of the victim and the witnesses in Pakistan in general, and in Khyber Pakhtunkhwa in particular.

No doubt it is a need of hour that we should consider seriously to legislate a law relating to protection of witnesses in Pakistan in general and in Khyber Pakhtunkhwa in particular. It is necessary for purpose of functioning effective investigation, inquiry and prosecution. It is also required for court carrying out trials because in modern times, it has become very common for a witness to turn hostile in a criminal case on account of threats or intimidation to their lives and properties or to that of their relatives.

Suggestions and Recommendations
The Following suggestions and recommendations have been made to overcome the problem:
1. It is suggested that there is a need to develop an extensive policy and legislation for the protection of witnesses in Pakistan in general, and in Khyber Pakhtunkhwa in particular. The critical part of the strategy of crime prevention is the Witness Protection Legislation. Without an operative legislation witnesses are improbable to cooperate with the judicial authorities and law enforcement agencies in giving testimony. However, it is essential for the effectiveness of
a witness protection law that it be seen as reliable in the eyes of
general public.
2. It is also suggested that in order to obtain the cooperation of
witnesses in combating crime, assurance must be given to them that
while doing so their lives or properties or their families’ lives would
be protected. This protection may be given to witnesses before,
during and/or after trial depending upon the type of witnesses and
degree of cooperation. The protection must be deemed to be given
as long as there exist the possibility of threat or intimidation to
witnesses or their families.
3. The police, the government and the judiciary should be involve for
effective witness protection legislation. To initiate this program, the
political will should be exhibited by the government; the execution
should be entrusted to the police; and the legal aspects of should be
covered by the judiciary.
4. The identities of the witnesses should be changed if the court thinks
it appropriate. Witnesses should be shifted to other place not known
to the persons interested, if the places where they usually resides is
insecure for them. The exposure of witnesses to media should be
avoided. They should be brought to court only at the sentencing
stage. All his statements should be recorded in isolation at the early
stage.
5. The role of law enforcement agencies should be defined. A number
of protective measures for the protection of witnesses against threat
or intimidation should be taken by the police. For instance, at
crucial times they can be involved in surveillance activities; lend a
personal alarm device; escort the witness to work, court, etc.;
increase police patrols in the area where the witness lives; assist
with emergency relocation; or even offer 24-hour police protection.
6. As the elements of criminal justice system i.e. Police, the judiciary,
the prisons etc. would be involved in witness protection program,
therefore, data base that manage the identities of the protected
witnesses, must be guarded carefully. Else the elements of criminal
justice will pose threats to life and liberty of a witness and his/her
family and prevent the ends of justices by disclosing the location
and real identities of the witnesses, and either eliminating them or
threatening them to retract from their earlier statements in court of
law. There must exists strict penal provisions for violation if
observed on part of the officials who administer witness protection program. And if such violations are made on part of witnesses who are registered in the said program, then penal action too should be taken against them.

7. In view of the above suggestions, it is subsequently recommended that there is a nascent need to legislate a law on the protection of witnesses which would cover all the issues relating to witnesses. The problems with regard to the protection of witnesses, protection of witnesses’ identities, witness assistance, and hostility are part of larger issues that the Criminal Justice in Pakistan in general, and in Khyber Pakhtunkhwa in particular faces now-a-days. Hence it is recommended that all the problems/issues relating witnesses should be dealt in a single legislation.

Notes and References:


Notes

1Alvarado v. Superior Court, 5 P.3d 203, 222 (Cal. 2000).
4 Section 2 (n) of the Sindh Witness Protection Act 2013.
5 Coroners and Justice Act, 2009, s. 97 (1).
6 Rule 75 (A) of the ICTR Rules.
7 Rule 69 (A) of the ICTY & ICTR Rules.