

# Addressing the Necessity for a 'Witness Protection Law' to Eliminate Backlogs in Criminal Cases in Bangladesh

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**ABSTRACT:** The testimony of the witness is regarded as the primary evidence by the court when convicting someone under criminal law. Consequently, the accused makes the witness their major target in an effort to disrupt a fair trial, which makes the witness uninterested in supporting the allegation. However, Bangladesh does not currently have a law specifically addressing witness protection, while the need for such a law is growing, and the concerned parties and the court are urging the government to do so. This paper aims to show that the witness protection statute significantly influences the reduction of criminal case backlogs. To investigate the aforementioned argument, the writers have considered the witness protection law and the backlog in criminal cases. Besides, this research emphasizes the necessity for effective witness protection measures by drafting thorough criminal legislation in Bangladesh. The authors applied the quantitative approach using a systematic questionnaire to conduct a survey of 271 respondents, who were chosen by the researchers to comprehensively understand the necessity for witness protection laws and how they relate to the backlog of criminal cases to substantiate the paper's argument. Witness testimony is important evidence, yet the law of our country makes no separate anticipation of witness protection. Occasionally, witnesses are threatened, which makes them unwilling to testify honestly and obstructs the delivery of impartial justice. Besides, witnesses decide not to testify because they fear being marked out in the future. Consequently, every day that the case is unresolved adds to the backlog at the court. Only when separate laws were to be created for the witnesses would it benefit the witnesses and reduce backlogs.

**KEYWORDS:** Backlogs, Criminal Justice System, Witness Protection Law.



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## HOW TO CITE:

Rahman, Md Khalid & Md Maksudur Rahman, "Addressing the Necessity for a 'Witness Protection Law' to Eliminate Backlogs in Criminal Cases in Bangladesh" (2022) 3:2 Indonesian Journal of Law and Society 167-194, online: <<https://doi.org/10.19184/ijls.v3i2.33611>>.

Submitted: 18/08/2022 Reviewed: 28/08/2022 Revised: 21/12/2022 Accepted: 22/12/2022

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## I. INTRODUCTION

Anyone present during an incident who can comprehend details is called a 'witness.'<sup>1</sup> The information, intelligence, and evidence provided by witnesses allow offenders to be prosecuted. Alarming, witnesses identified in charge sheets of serious crimes are the target of threats, intimidation, and harassment by the alleged offender or their supporters, preventing them from appearing in court or before a tribunal to testify during the case's trial.<sup>2</sup> To foster faith and trust in the judicial system, the system must also be aware of the requirements and reservations of witnesses and offer sufficient assistance, protection, and assurance. Because they worry for their safety, families, and property, witnesses are hesitant to testify in court or before a tribunal. However, when the witnesses appear in court to testify during a trial, they frequently become hostile because of pressure or threats from the accused or his supporters sitting behind them.<sup>3</sup> From the importance above of the witness, they are considered one of the most necessary parts for defining the fact both in civil suits and criminal cases as Bentham understands: "Witnesses are the eyes and ears of justice."<sup>4</sup> As a result, witness protection is important for any legal system at national and international levels.

There is currently no explicit legislation in Bangladesh's criminal prosecutions that might protect witnesses with a few exceptions.<sup>5</sup> Legislation on the protection of witnesses is urgently needed in Bangladesh

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<sup>1</sup> Dorling Kindersley, *Dorling Kindersley Illustrated Oxford Dictionary*, 2nd ed (Gardners Books, 2003).

<sup>2</sup> K Shamsuddin Mahmood, "The necessity of enacting witness protection law" (2020) *The Daily Star*, online: <<https://www.thedailystar.net/law-our-rights/news/the-necessity-enacting-witness-protection-law-1866439>>.

<sup>3</sup> *Final Report on a proposed law protecting victims and witnesses of crimes involving grave offences* (Dhaka, Bangladesh: Bangladesh Law Commission, 2006).

<sup>4</sup> Horst Fischer, Claus Kress, & Sascha Rolf, *International and national prosecution of crimes under international law : current developments* (Berlin: Berlin Verlag, 2001).

<sup>5</sup> Md Zakir Hossain, "The Victim & Witness Protection Law in Bangladesh: A Horizontal Thought" (2021) *Dhaka Courier*, online: <<http://dhakacourier.com.bd/news/Society/The-Victim-&-Witness-Protection-Law-in-Bangladesh:-A-Horizontal-Thought/3327>>; Raisul Sourav, "The legal protection of Whistleblowers", *The Daily Star* (25 May 2021), online: <<https://www.thedailystar.net/law-our-rights/news/the-legal-protection-whistleblowers-2098373>>.

in order to sustain the criminal justice system<sup>6</sup> and promote justice in the community. Due to the absence of witness protection laws in the legal system, it is nearly hard to provide evidence in our criminal justice system during an investigation or in court when the other side of the case is stronger. These processes impose a burden on criminal cases, which create extreme backlogs. Thus, this issue must be addressed with utmost importance.

Witness protection is critical to the Court's success since it ensures that witnesses can participate and speak freely and accurately without fear of retaliation or further injury. The Court shall take necessary steps to safeguard witnesses' safety, bodily and psychological well-being, dignity, and privacy. However, in Bangladesh, it has been reported alarmingly that witnesses increasingly avoid appearing to the courts to give their statements and evidence for fear of being harassed.<sup>7</sup> According to Md Zakir Hossain, Senior Judicial Magistrate, Chief Judicial Magistrate Court of Feni, he has seen plenty of situations in which the witnesses have reported that the accused has displayed apprehension to the witnesses not to appear in court.<sup>8</sup> Even if they appear in court, they are often hostile, giving the accused a chance to be acquitted. In its Report, the Bangladesh Law Commission also expressed fear and concern regarding the vacuum of separate and specific laws on witness protection.<sup>9</sup> As a result, the witness' predicament is made worse since they lack legal remedies for the injuries resulting from their fear.<sup>10</sup> Md Zakir Hossain underlined the need to create a legislative

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<sup>6</sup> In *Suneetha Narreddy and Ors. Vs. The Central Bureau of Investigation and Ors.*, the court, observed the importance of the criminal justice system and referred to it as a settled position of law without which the criminal trial is not free and fair. The court further observed that as per the settled position of law, a free and fair trial is a *sine qua non* of Article 21 (Protection of life and personal liberty) of the Constitution of India. MANU/SC/1552/2022.

<sup>7</sup> K Shamsuddin Mahmood, *supra* note 2.

<sup>8</sup> Md Zakir Hossain, *supra* note 5.

<sup>9</sup> Even though they are the principal stakeholders in the prosecution's effort to establish its case "beyond all reasonable doubt," there is no explicit statute protecting the victims' rights and, in particular, the witnesses. See note 3.

<sup>10</sup> Atwar Rahman & Mohammad Mahdy Hassan, "Necessity of Legislation for the Protection of Witness in Bangladesh: A Legal Study" (2015) 16 *Journal of Judicial Administration Training* 26–34.

framework to safeguard witnesses to eradicate Bangladesh's prevalent culture of impunity.<sup>11</sup> In addition, Hossain underlined the need to give the witnesses security and rights following the recommendations of the UNDP.<sup>12</sup> He requested that the Bangladeshi government should enact separate witness protection legislation under the 2006 guidelines<sup>13</sup> provided by the Bangladesh Law Commission.<sup>14</sup>

Md Milan Hossain has raised his concern that the court is not carrying out its legal and constitutional responsibility under the Constitution of Bangladesh and the statutory laws.<sup>15</sup> Md Milan Hossain investigated the causes of case backlogs in his study, looking at factors consisting of the district and session judge court system, the lengthy trial procedure, and the lack of sufficient judicial officials or personnel. He emphasised revising and modifying present legislation to address the backlog of cases. Despite this, he could not demonstrate the need for witness protection due to case backlogs.<sup>16</sup>

Vijay Kumar Singh expressed fears in his article that despite several incidents in which the accused threatened witnesses not to speak in court, India has not yet passed a specific witness protection law.<sup>17</sup> Although his paper was investigated using a qualitative approach based on Indian law, the court's rulings provide the piece with multiple interpretations. He reiterated his claim that the state must play a significant role in witness

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<sup>11</sup> Zakir Hossain, "In Search of the Protection of the Victim & Witness Law in Bangladesh" (2021) 8:2 PSC Journal, online: <<https://psc.gov.bd/storage/app/media/uploaded-files/06-psc-journal-vol-8-issue-2-jul-dec-2021.pdf>>.

<sup>12</sup> *Development of a Witness and Victim Support System*, by Jasmina Mujkanović, Lessons Learned Series: Rule of Law, Justice and Human Rights (United Nations Development Programme, 2014).

<sup>13</sup> note 3.

<sup>14</sup> Zakir Hossain, *supra* note 11.

<sup>15</sup> Milan Hossain, "Backlog of cases - civil and criminal justice: a comparative study, Bangladesh perspective" (2019) 6:3 International Journal of Human Rights and Constitutional Studies, online: <<https://www.inderscienceonline.com/doi/epdf/10.1504/IJHRCS.2019.097967>>.

<sup>16</sup> *Ibid.*

<sup>17</sup> Vijay Kumar Singh, "Emerging Need for Witness Protection Laws in India Analysing the Success and Failures" (2009) 1:2 GNLU Law Review, online: <<http://www.ssrn.com/abstract=1351136>>.

protection, at least in delicate cases involving influential individuals who have access to political patronage and could use their financial and physical might to prevent the trial from being polluted, derailed and the truth from being lost.<sup>18</sup> Atwar Rahman and Mohammad Mahdy Hassan examined the legislative framework governing witness protection in Bangladesh in their study. They have also stressed the need for new legislation to stop witness intimidation and harassment.<sup>19</sup>

This paper emphasised their primary concern about the research gap while examining the previous scholarly works. These works have primarily focused on the causes of witness protection or case backlogs. However, the authors of the current paper attempt to assess the construction between witness protection law and case backlogs, i.e., how does witness protection law directly reduce case backlogs in Bangladesh? This paper would consider whether a particular witness protection statute was necessary to prevent harassment and intimidation.

Nevertheless, the cases piled up over the years due to extreme case backlogs which were undissolved due to various grounds. When a court's caseload reaches its peak to hear or try cases on time, there is a backlog of cases.<sup>20</sup> Courts need help to handle the influx of cases on several grounds. These grounds are not limited to a shortage of human resources (judges and court personnel), a vacuum in the victim and witness protection law, a rise in incoming cases, inefficiencies in court work procedures, and delays in judicial proceedings.<sup>21</sup> As a result, the number of active cases keeps increasing over time. A backlog occurs when these open cases take longer to adjudicate than expected. The system requires to handle cases quickly and effectively; else, the entire infrastructure of the court system will be demolished shortly.<sup>22</sup> Since the enactment of the witness protection legislation and the backlog of criminal cases would substantially influence one another, this article primarily attempts to show how the respondents

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<sup>18</sup> *Ibid.*

<sup>19</sup> Atwar Rahman & Mohammad Mahdy Hassan, *supra* note 10.

<sup>20</sup> Milan Hossain, *supra* note 15.

<sup>21</sup> Editorial, "Backlog of cases in courts", *The Daily Star* (31 December 2021), online: <<https://www.thedailystar.net/editorial/news/backlog-cases-courts-1849126>>.

<sup>22</sup> Milan Hossain, *supra* note 15.

perceive the witness protection law while exploring the relationship between these two. The authors' utilisation of closed-ended questions adopting the quantitative technique may give the respondents few alternatives for expressing their anxiety due to case backlogs.

According to the Supreme Court Administration, Bangladesh has had 3,684,728 cases backlogged in nationwide courts since the country's independence until December 2019.<sup>23</sup> Further statistics reveal 512,685 cases on hold at the Supreme Court, 489,068 of which are in the High Court Division and 23,617 in the Appellate Division.<sup>24</sup> Subordinate courts and tribunals are holding the remaining 3,172,043 case backlogs.<sup>25</sup> These tremendous numbers of cases impose a huge pressure on the infrastructure of the administration of the judicial system. However, the insecurities in witness protection also cause delays in criminal prosecution, which is believed to be a strong reason for criminal case backlogs in our country.

The witnesses are afraid for their safety and security as they become victims of intimidation and harassment from the accused. Based on the previous discussion, the authors argue that specific legislation on witness protection would provide the witnesses with the necessary legal and mental support hence they would be motivated to appear before the court. Besides, due to the non-appearance of the witnesses, the cases take more time than regular, creating backlogs. Legislation on witness protection would provide necessary protection to the witnesses, which would motivate them to appear in court. Hence the appearance of the witnesses in the courts during the trial would well-order the judicial procedures and reduce the case backlogs.

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<sup>23</sup> Mizanur Rahman, "3.7 million cases in backlog in Bangladesh courts" (2020) Dhaka Tribune, online: <<https://archive.dhakatribune.com/bangladesh/court/2020/07/16/bangladesh-s-courts-collectively-have-36-84-728-case-backlogs>>.

<sup>24</sup> *Ibid.*

<sup>25</sup> *Ibid.*

## II. METHODS

The study was conducted in four phases: Phase 1 (instrument design), Phase 2 (Selection of the respondents), Phase 3 (record collection), and Phase 4 (results). This study uses 'descriptive analysis', which has been investigated in empirical research based on a quantitative approach. The Likert scale has been used to collect data based on surveys to apply a quantitative approach. Our research has been conducted on individuals who have a complete law background or are experienced with our criminal judicial system. The authors used structured questionnaires to collect data from the respondents customarily in two ways, namely online in Google form and physically by visiting the court.

A systematic questionnaire was used to survey 271 respondents with prior knowledge or expertise in "witness protection" and "backlogs of cases." We initially explained the survey's goal to respondents we physically interacted with. Based on the replies received, the researchers evaluated the questionnaire. Each question was asked two or three times to ensure that the responders fully understood it. Selected respondents, including judges, lawyers, and students, were provided online questionnaires, and a phone conversation about the study's goals followed. Hence, the purposive sampling method has been applied to conduct the survey, except for the victims.

Questionnaire items were primarily adopted from prior studies on 'witness protection' and 'backlogs of cases'. All questions used in the study were on the Likert scale ranging from strongly agree (5) to strongly disagree (1). All collected data were compiled for statistical analysis, such as frequency percentage.

The survey's primary goal is to analyse respondents' perceptions of "witness protection" and "backlogs of cases". The responders generously shared their insightful thoughts on safeguarding the witnesses' safety from being harassed or intimidated. We consulted a total of 271 respondents for their views on this, including 116 advocates, 118 law students, 16 victims, and four judges, of which 99 were female, and 171 were male respondents.

Demographics	Percentage	Frequency
Gender		
Male	63%	171
Female	37%	99
Age Groups		
18-30	48%	130
30-45	31%	85
46-60	18%	48
61 years and above	03%	07
Profession		
Law Students	44%	118
Advocates	43%	116
Law Faculty	06%	16
Judge	01%	04
Victim	06%	16

**Table 1.** *Demographics*

### III. THEORETICAL AND EMPIRICAL ANALYSIS ON 'WITNESS PROTECTION' AND 'BACKLOGS OF CASES'

#### *A. Witness protection*

Before analysing the concept of 'witness protection', we must identify the person who can be a witness. Apart from the proposed definition provided by the Bangladesh Law Commission,<sup>26</sup> few ideas on the concept of witness prevail in the academic and practical aspects. Vijay proposed the definition of witness as such. *In British and American legal terminology, a witness is a person who testifies or provides evidence in a judicial or quasi-judicial action or attests to or is present when a legal document, such as a deed, affidavit, or will, is executed.*<sup>27</sup> Only some people are eligible to meet as witnesses, such as those of unsound minds. In contrast, this research focuses on the judicial group of witnesses who testify in a legal procedure, especially in a criminal trial.

<sup>26</sup> Section 2(p) of the proposed Victim and Witness Protection Act observes that "witness" means any person, including a child, who is or may be required to make a statement or give evidence, or who has made a statement or given evidence in any investigative or judicial proceedings about the commission of an offence under the schedule to this Act". See note 3. Section 172 of the Penal Code, 1860

<sup>27</sup> Vijay Kumar Singh, *supra* note 17.



What exactly does the word "witness protection" imply? To put it another way, witness protection is the protection of the police of a threatened witness or anybody else involved in the court system, including defendants and other clients, before, during, and after a trial.<sup>28</sup> While some witnesses may only need security until the end of a trial, others are given a new identity and may spend the remainder of their life under government protection. Witness protection is generally required in organised crime cases, where law enforcement believes witnesses may be intimidated by defendants' coworkers. Bangladesh's legal system does not provide any rights or protection to witnesses. However, witnesses have recently received attention from several legal systems. There is a growing demand for witnesses' concerns to be integrated into the criminal justice system and for them to have access to and participate in criminal processes. It is now universally understood that justice cannot be effectively administered without considering the victim's rights and interests. However, Bangladesh's present legislative and institutional framework for victim protection is insufficient and has been established incoherently.<sup>29</sup> There is no special legislative structure to address all aspects of victim protection.

There are other observations as well. Zakir Hossain observed, "The word 'witness' may be defined as any person, including a child, who is or may be required to make a statement or give evidence or who has made a statement or given evidence, in any investigative or judicial proceedings to the commission of an offence".<sup>30</sup> The Bangladesh Law Commission believed that the witnesses should have some fundamental rights. It further stated that the rights, benefits, and protection that must be provided to the victims and witnesses include, among other things, housing in a secure facility, relocation, changing one's name, as well as counselling and financial support, transportation facilities, subsistence allowance, medical care, and other facilities to ensure the victim and witnesses' security and

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<sup>28</sup> note 3.

<sup>29</sup> Abdullah Al Faruque, "The Law and Policies on Affirmative Action: Rhetoric and Reality" 12:3 Bangladesh Journal of Law, online: <<https://www.biliabd.org/wp-content/uploads/2021/08/Dr.-Abdullah-Al-Faruque-1.pdf>>.

<sup>30</sup> Md Zakir Hossain, *supra* note 5.

help them become self-sufficient.<sup>31</sup> If the witness's involvement in the legal process puts his or her family or another person at risk, protection may also be given to that person or the witness's immediate family.<sup>32</sup>

*B. International and Domestic Mechanisms on Witness Protection Legislation*

Witness protection programs (identity and physical safety) are accepted worldwide in all eminent legal systems. The witness identity protection policies are all covered by the Law Commission in its 198<sup>th</sup> Report in the United Kingdom, Australia, New Zealand, Canada, South Africa, the United States of America, and Portugal, including the European Court of Human Rights, the International Criminal Tribunal for Yugoslavia, and the International Criminal Tribunal for Rwanda.<sup>33</sup> Although a "fair and public hearing" is mentioned in Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, the press and public may be excluded from all or part of the trial in the interests of morals, public order, or national security in a democratic society. The interests of juveniles or private life of the parties are required. To the extent strictly necessary in the opinion of the Court in special circumstances where publicity would prejudice the interest of justice.<sup>34</sup>

The Organized Crime Control Act of 1970 and the Comprehensive Crime Control Act of 1984 in the US authorised the Witness Security Program. A witness or potential witness in a legal procedure involving organised crime or another major offence may be relocated and given various protections under the Witness Security Reform Act of 1984.<sup>35</sup> If the family or person may also be in danger due to the witness's involvement in the legal process, protection may also be given to the immediate family of, or a person intimately affiliated with, such witness or potential witness.<sup>36</sup>

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<sup>31</sup> Note 3.

<sup>32</sup> *Ibid.*

<sup>33</sup> Vijay Kumar Singh, *supra* note 17.

<sup>34</sup> *Ibid.*

<sup>35</sup> Section 142 of the Comprehensive Crime Control Act, 1984

<sup>36</sup> Section 501 of the Organized Crime Control Act, 1970

Threatening to prevent a witness from testifying is considered contempt of court in English law.<sup>37</sup> Therefore, any threat or act of retaliation against a witness after he has testified in court is likewise regarded as contempt. The Criminal Justice and Public Order Act of 1994 is a relevant statute passed by the U.K. government that outlines penalties for intimidating witnesses.<sup>38</sup> In the case of laws, making improper threats against witnesses may amount to the common-law offence of perverting justice.<sup>39</sup>

### *C. Precedents on Witness Protection in Distinctive Court Observations*

In the *Bangladesh National Women Lawyers Association (BNWLA) vs. Bangladesh and Ors.*, the court emphasised the enactment of new laws on witness and victim protection:

"Government shall take immediate steps to enact a law to introduce witness and victim protection system for effective protection of victims and witnesses of sexual harassment as well as the people who come forward to resist sexual harassment. The law will provide measures for taking account of the victims' mental trauma and redressing the same."<sup>40</sup>

The Supreme Court and High Courts of India have repeatedly underlined the need for witness protection and, ultimately, a fair trial regarding witnessing protection. Before *Maneka Gandhi*,<sup>41</sup> the Bombay Police Act's prohibition against detenués questioning the witnesses who had testified against them was affirmed by the Supreme Court in *Gurbachan Singh v. State of Bombay*.<sup>42</sup> It was decided that the law should only be used in extreme situations where witnesses were reluctant to testify publicly against

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<sup>37</sup> The Crown Prosecution Service, "Contempt Court, Reporting Restrictions and Restrictions on Public Access to Hearings (Crown Prosecution Service)", *The Crown Prosecution Service* (4 May 2022), online: <<https://www.cps.gov.uk/legal-guidance/contempt-court-reporting-restrictions-and-restrictions-public-access-hearings>>. Accessed 20 December 2022.

<sup>38</sup> Section 51 of The Criminal Justice and Public Order Act, 1994

<sup>39</sup> *R v Kellett* [1976] QB 372

<sup>40</sup> 18 BLC (2013) 290

<sup>41</sup> *Maneka Gandhi vs. Union of India*, AIR 1978 597

<sup>42</sup> AIR 1952 SC 221

dishonest behaviour out of fear for their safety or the safety of their property. The issue was not examined at this stage whether the procedure was 'fair'. The decisions in *G.X. Francis v. Banke Bihari Singh*<sup>43</sup> and *Maneka Sanjay Gandhi v. Ram Jethmalani*<sup>44</sup> stressed the need for a congenial atmosphere for a fair trial, including the protection of witnesses.

The Delhi High Court recently established the rules for witness protection in *Neelam Katara v. Union of India*,<sup>45</sup> but they do not mention how the witness' name might be kept secret before or during the trial. The decision of the Full Bench of the Punjab and Haryana High Court in *Bimal Kaur Khalsa*<sup>46</sup> addresses some of the issues but does not fully address the protection of the witness from the media. These rulings emphasise the requirement for thorough witness protection legislation.<sup>47</sup>

#### *D. Existing Framework of Witness Protection Law in Bangladesh*

The common law system prevails in Bangladesh. The British colonial rulers approved the legal system in the Indian subcontinent. The Mughal concepts of Islamic law, Hindu law, and the common law perspective of justice, equity, and fairness were considered the legal system framework. The Penal Code,<sup>48</sup> the Code of Criminal Procedure,<sup>49</sup> and the Evidence Act<sup>50</sup> provided the fundamental framework for the legal system governing substantive offences and criminal procedures in our criminal justice system. Although a victim has the right to initiate legal action by filing a complaint or first information report. In reality, victims of crimes do not have any rights to be present, informed, and heard or to have a voice in criminal proceedings unless they are called as prosecution witnesses by the court.

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<sup>43</sup> AIR 1958 SC 209

<sup>44</sup> (1979) 4 SCC 167

<sup>45</sup> Vijay Kumar Singh, *supra* note 17.

<sup>46</sup> AIR 1988 P&H 95

<sup>47</sup> Vijay Kumar Singh, *supra* note 17.

<sup>48</sup> Act No. XLV of 1860

<sup>49</sup> Act No. V of 1898

<sup>50</sup> Act No. I of 1872

## 1. The Constitution

Bangladesh's Constitution states, "Every person accused of a criminal offence shall have the right to a speedy and public trial by an independent and impartial Court or tribunal established by law".<sup>51</sup> This right falls under the 'Fundamental Rights' category, and if violated, the aggrieved person could claim protection in the court of justice.<sup>52</sup> A few other fundamental rights for Bangladeshi citizens are also reaffirmed by the Constitution, including equality before the law,<sup>53</sup> right to protection of the law<sup>54</sup> and safeguard against arrest and detention.<sup>55</sup>

## 2. The Evidence Act of 1872

Sections 151 and 152 of the Evidence Act of 1872 outline associated requirements about witness protection, while examination concerning the forbiddance of indecent, immoral, and insulting queries appears to the Court needlessly offensive in form. However, these two sections barely counsel inter-court protection solely.

## 3. The Penal Code of 1860

Section 506 of the Penal Code 1860 allows for social control when undertaking criminal intimidation. Criminal intimidation is defined as threatening another with injury to his or her person, name, or property, or the person or name of anyone in whom that person has an interest, with the intent to cause alarm or attempt any action that he or she is not *de jure* guaranteed to attempt, or omit to attempt any action that person is *de jure* entitled to attempt as a means of avoiding the executor.<sup>56</sup> Despite the broad definition, it falls short of providing additional protection to the witness.

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<sup>51</sup> Article 35(3) of the Constitution of the People's Republic of Bangladesh

<sup>52</sup> Article 26 of the Constitution of the People's Republic of Bangladesh

<sup>53</sup> Article 27 of the Constitution of the People's Republic of Bangladesh

<sup>54</sup> Article 31 of the Constitution of the People's Republic of Bangladesh

<sup>55</sup> Article 33 of the Constitution of the People's Republic of Bangladesh

<sup>56</sup> Section 503 of the Penal Code, 1860.

#### 4. Other Special Laws

There are a few provisions in the judicial system of Bangladesh under the category of a special law that offer protection for witnesses and victims. The 2013 Prevention of Torture and Custodial Death Act is among the best laws. When under the care of the police or other authorities, it offers complete safety. The Women and Children Repression Prevention Act 2000 is another law. Sections 9(5) and 14 deal with the victim's interest and protection. In this context, Section 14 of the Prevention of Human Trafficking Act, 2012 defines a distinct offence as any threat or intimidation made to a victim or witness, as well as any obstacle to an investigation or court case, with a maximum sentence of seven years. Again, the Children Act addressed children's protection and legal rights per international standards and was approved by the Parliament in 2013. The thorough protection of witnesses is covered under a distinct part of the International Crimes Tribunal Rules of Procedure, 2010.<sup>57</sup> The Public Interest Information Disclosure (Provide Protection) Act, referred to the Whistleblower Protection Act, guaranteeing legal protection to whistleblowers back in 2011.

##### *E. The Emergence of Witness Protection Law in Bangladesh*

In criminal justice procedures, witness protection is an important device that can assist states in bringing criminals to justice, particularly in organised crime and terrorism. Many countries have devised and deployed witness protection measures to ensure that key testimony is connected to criminal processes to strengthen their capacity to prosecute terrorist attack perpetrators more successfully.<sup>58</sup> Some examples in Bangladesh assert that the offenders attacked the witnesses and individuals feel insecure when asked to testify in court. In August 2019, a witness's girl was gang raped and murdered in the Patuakhali District because her mother testified as a

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<sup>57</sup> Section 58A.

<sup>58</sup> UNODC, "South Asia: The importance of witness protection in criminal proceedings", *United Nations Office on Drugs and Crime* (2020), online: <[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)>.

witness in the Rape case against the accused.<sup>59</sup> Laila Begum testified in front of the judicial court as a witness in a murder case who was afterwards gravely injured by the accused and passed away shortly after the injury after the accused was let free from jail.<sup>60</sup> In a case, Pir Ali was a witness. The accused intimidated him, telling him not to appear in court. Consequently, he submitted a General Diary (GD) to the local law enforcement and was discovered dead later. According to the victim's family, it was the outcome of the witness testifying in court.<sup>61</sup> These instances corroborate the necessity of witness protection legislation for the safety of the witnesses.

Other than the life-threatening concerns, it is common for key witnesses to become hostile in cases involving wealthy and powerful people in Bangladesh. The accused party frequently threatens, intimidates, and harasses witnesses to keep them from providing their testimony. Tanu rape Case is an instance.<sup>62</sup> "After being seen giving an interview on television, Mizanur Rahman Shohag was kidnapped. He was released 16 days later, and his family refused to discuss his detention. The court failed to provide Mizan with enough protection, as seen by his family's unwillingness to provide additional testimony." Our judicial system is insufficient to deal with such a circumstance. Closed-circuit cameras can be installed in all courts to safeguard the safety of witnesses and those involved in the proceedings. Evidence can be presented through video conference from a safe, secure, and secret location outside the courtroom, which should be legalised.<sup>63</sup>

In July 2019, the Police Bureau of Investigation (PBI) performed research and produced a report on the country's banditry cases. In their Report, PBI claimed unequivocally that hostile witnesses caused 50% of dacoity

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<sup>59</sup> Md Zakir Hossain, *supra* note 5.

<sup>60</sup> Kamruzzaman Polash, "Witness Protection: A Crying Need for a Law", *Lawlex* (10 June 2022), online: <<https://lawlex.org/lex-pedia/witness-protection-a-crying-need-for-a-law/26975>>.

<sup>61</sup> *Ibid.*

<sup>62</sup> Rafiul Islam, "Sohag returns after 16 days", *The Daily Star* (2016), online: <<https://www.thedailystar.net/frontpage/sohag-returns-after-16-days-1208281>>.

<sup>63</sup> Ashabur Tarun, "Need for witness protection law", *The Daily Star* (2 February 2016), online: <<https://www.thedailystar.net/law-our-rights/rights-advocacy/need-witness-protection-law-210934>>.

prosecutions to fail in court.<sup>64</sup> In the last ten years, the Narcotics Control Department revealed that 48.45% of cases were filed, and the accused were acquitted due to witnesses.<sup>65</sup> From 2002 to 2016, the daily Prothom Alo comprehensively investigated the Dhaka Women and Children Repression Prevention Tribunals cases.<sup>66</sup> According to this study, only 3% of cases resulted in a guilty verdict for the accused. This study also claimed that 55% of cases were closed due to a lack of appropriate and sufficient witnesses.<sup>67</sup> Furthermore, the culprit was only acquitted for the sake of the witnesses.<sup>68</sup> The Special Public Prosecutor for the tribunal, Mahmuda Akhtar, said the case's progress had been slowed by the absence of witnesses in court.<sup>69</sup> Furthermore, most of the witnesses moved their addresses for security reasons, as Mahmuda stated.<sup>70</sup> There is no provision under the current legislation which would punish the accused in the ongoing trial, so if any witness is intimidated, retaliated against, or otherwise harassed, they must submit a new complaint. Therefore, witnesses might think filing a new complaint would take time and effort. Because of this, most witnesses desire to avoid naming them as witnesses.<sup>71</sup> Thus, there is no substitute for witness protection law to enable legal action and ensure proper justice.

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<sup>64</sup> Md Zakir Hossain, *supra* note 5.

<sup>65</sup> Atwar Rahman & Mohammad Mahdy Hassan, "Insufficiency on witness protection", *The Daily Star* (12 May 2015), online: <<https://www.thedailystar.net/law-our-rights/law-watch/insufficiency-witness-protection-81716>>.

<sup>66</sup> Md Zakir Hossain, *supra* note 5.

<sup>67</sup> *Ibid.*

<sup>68</sup> Atwar Rahman & Mohammad Mahdy Hassan, *supra* note 65.

<sup>69</sup> Mizanur Rahman & Md Sanaul Islam Tipu, "Delayed justice, case backlogs prolong sufferings of women, children" (2020) Dhaka Tribune, online: <<https://archive.dhakatribune.com/bangladesh/2020/03/09/delayed-justice-case-backlogs-prolong-sufferings-of-women-children>>.

<sup>70</sup> *Ibid.*

<sup>71</sup> However, a person cannot consciously choose not to testify. In the "Complaint Registrar" case, the complainant included the names of the witnesses. However, the police could add a witness while preparing the "Charge Sheet" in the "General Registrar" case.



### *F. Legal Provisions for Non-appearance of the Witnesses*

If a witness has a legal responsibility to appear before the court, the Penal Code of 1860 includes legal procedures for the non-appearance of the witnesses. However, there are two distinct circumstances for the non-appearance of the witnesses: *First*, absconding to avoid service of summons or other proceedings. Anyone who tries to escape after receiving a summons, notice, or order from a public official who is legally authorised to issue such summons, notices, or orders shall be punished with simple imprisonment for a term that may not exceed one month, a fine that may not exceed 500 Taka or both; or, If the summons, notice, or order requires an individual to appear in person, through an agent, or to present a document before a court of justice, they might receive simple imprisonment for a term up to six months, a fine up to 1,000 takas, or both.<sup>72</sup>

*Second*, non-attendance in obedience to an order from a public servant. If a person is required by law to appear in person or through an agent at a specific location and time under a summons, notice, order, or proclamation issued by a public official legally authorised to act in that capacity, and the person willfully fails to appear at that location or time or leaves the location where required to appear before the time at which it is lawful for him to do so, he will be punished with simple imprisonment for a term that extends to one month, or with fine which may extend to five hundred takas or with both; If the summons, notice, order, or proclamation requires anyone to appear in person or through an agent in a court of justice, he might receive simple imprisonment for a term up to six months, a fine up to 1,000 takas or both.<sup>73</sup>

### *G. Whistle Blowers under the Purview of Witness Protection Policy*

Laws and procedures protecting witnesses are different from whistleblowing. There is some overlap between the two, and frequently a pledge to protect the person's name is included. However, witness protection is a considerably more serious issue that typically entails the

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<sup>72</sup> Section 172 of the Penal Code, 1860

<sup>73</sup> Section 174 of the Penal Code, 1860

physical protection of the person who will not testify in a criminal prosecution unless such protection is given.<sup>74</sup> The scope of the witness protection program can only partially be disseminated from the whistleblower policy since, despite being distinct, they can end up testifying in a case. However, a new system for the free flow of information and brave journalism in the public interest is established in Bangladesh by the Right to Information Act, 2009 (RTI Act), in conjunction with the Whistleblower Protection Act of 2011.<sup>75</sup>

Following their enactment, these two pieces of legislation supersede the notoriously criticised Official Secrets Act and other laws, such as Section 123 of the Evidence Act of 1872 (dealing with evidence on matters of state), the Rules of Business of 1996, and the Government Servants Rules of 1979.<sup>76</sup> The RTI Act and the Whistleblower Act's Section 3 state that their separate provisions supersede any incongruous clauses in any other legislation now in effect in the nation. However, the Whistleblower Protection Act of 2011 protects whistleblowers, even in their identity.

#### *H. Respondent's Perception on the Necessity of Witness Protection*

Most respondents express their affirmative perceptions on the necessity of the witness protection law for the safety and protection of the witnesses to ensure the rule of law and the implementation of the criminal administration of the justice system. The following figures will explain the details of the respondents' perceptions.

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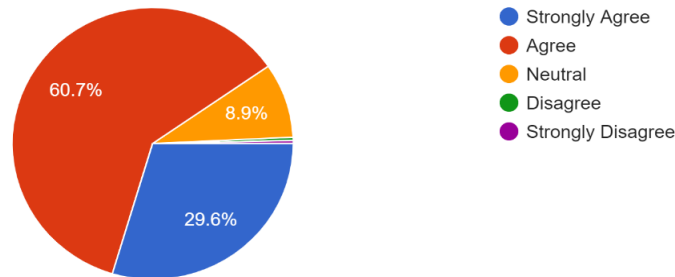
<sup>74</sup> Vijay Kumar Singh, "Whistle Blowers Policy Challenges and Solutions for India with Special Reference to Corporate Governance" (2009) 3:2 GNLU Journal of Law, online: <<http://www.ssrn.com/abstract=1351124>>.

<sup>75</sup> Raisul Sourav, *supra* note 5.

<sup>76</sup> *Ibid.*

1. Witness protection is the security provided to a threatened person providing testimonial evidence to the justice system, including defendants and other clients.

270 responses

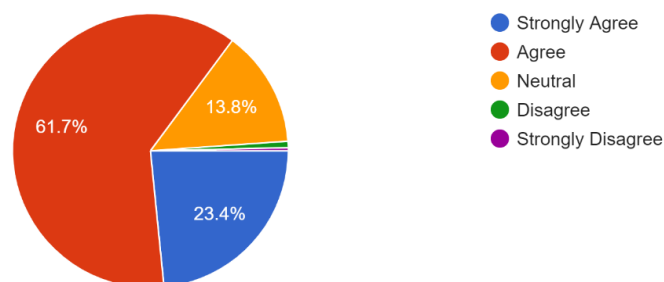


**Figure 1.** *Perception about witness protection*

In Figure 01, 60.7% of the respondents provide positive feedback regarding the conception of witness protection, whereas 29.6% strongly Agree, 8.9% neutral, 0.4% disagree, and 0.4% strongly disagree. So here we found out that most of the respondents (more than 90%) have expressed their opinion in favour of the statement.

2. Without precise laws, it is impossible to provide adequate security to the Witness

269 responses

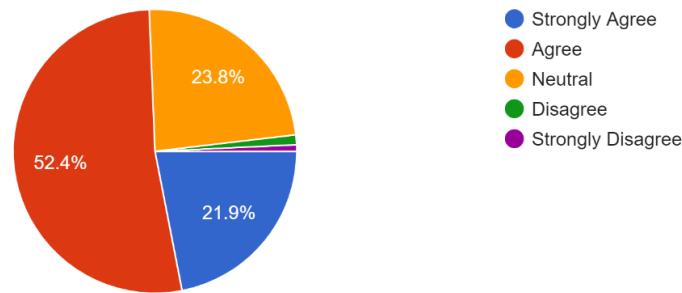


**Figure 2.** *Perception of specific laws on witness protection*

In Figure 02, 61.7% show their positive attitude towards enacting specific laws on witness protection, 23.4% of respondents strongly agreed, 13.8% were neutral, 0.7% disagreed, and 0.4% strongly disagreed. Most people have expressed their opinion in favour of the statement.

3. Without the use of witness protection, it is impossible to alleviate witnesses' fears.

269 responses

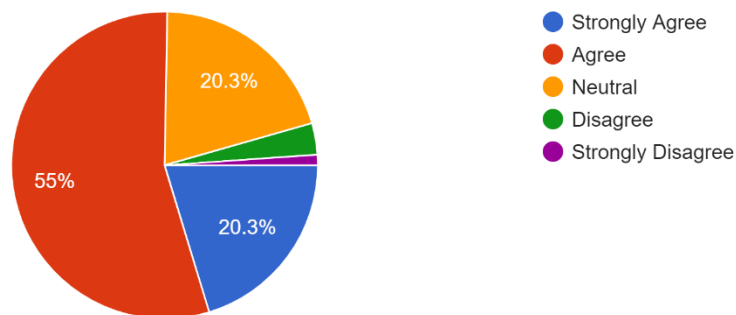


**Figure 3.** *The witness's perception must be addressed*

Legal enactments and implementations bring positive impacts on social implications. In Figure 3, 52.4% of respondents show the perception of decentralising fear of harassment. 21.9% Strongly Agree, 23.8% Neutral, 1.1% Disagree, and 0.7% Strongly Disagree with the perception. So, most people have expressed their opinion in favour of the statement.

6. Witness protection in Bangladesh is insufficient, therefore witnesses are hesitant to testify.

271 responses



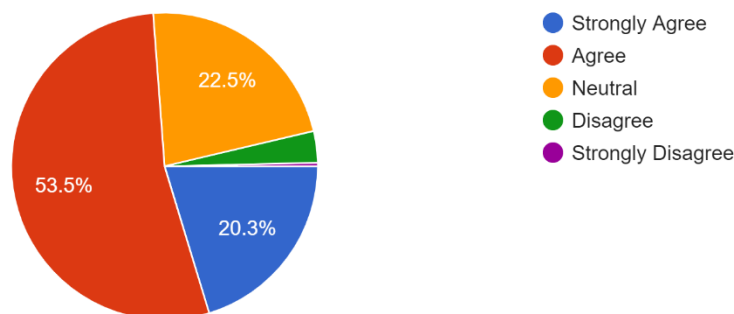
**Figure 4.** *Witness hesitates to testify due to social and legal stigma*

The respondents feel that the witnesses get less social and legal protection while standing before the court as witnesses. The witnesses get harassed through their participation in the cases is imperative. In Figure 04, 55% of

respondents agree, 20.3% Strongly Agree, 20.3% are Neutral, 3.3% Disagree, and 1.1% Strongly Disagree.

7. The judicial system will be smooth if there is a witness protection law.

271 responses



**Figure 5.** *Witness protection law for the proper administration of the judiciary*

Providing judgement of a case within the regular framework will decrease the backlogs, enhancing the positive experience in the proper administration of the judiciary. In Figure 05, 53.3% of respondents agree, 20.3% strongly agree, 22.5% are neutral, 3.3% disagree, and 0.4% strongly disagree.

Primary field data have been extensively covered in the outcome above section. To investigate the potential for policy direction, additional investigation of the field understanding is necessary. The study seeks to identify the primary strategic concerns and priorities reported by the respondents in this segment. Even though witness testimony is considered crucial, the law does not mention witness protection. Witnesses are occasionally threatened, which makes them reluctant to speak the truth and prevents the administration of fair justice. That time is essential since witnesses and their families are at risk during any step of the judicial process, including hearings, arguments, and trials. They need enough defence. They are afraid even while they are at residence. Hence, the majority view has supported our argument in adapting and implementing specific legal coverage for witnesses to lessen the backlog of criminal cases.

### *I. Backlog of Cases in Criminal Courts*

Criminal Courts are law courts that judge and sentence accused offenders who have been found guilty after a judicial trial. The number of criminal cases in Bangladesh's subordinate judiciary is rising at an alarming rate. In contrast, several actors and causes are each responsible for the situation. New criminal offences have increased the number of cases filed in the criminal court system. The system is being influenced by laws implemented in response to several socioeconomic issues in various spheres and ways. As a result, overcriminalisation is a topic worth researching as the most important of all the factors influencing policy and decision-making, research practice level of the criminal law's road toward addressing the growth in society's crimes. Increasing criminal law legislation, together with the current criminal law framework, is putting a strain on the criminal justice system of Bangladesh. As a result, the system is suffering an "eruption" of lawsuits, resulting in rising backlogs.<sup>77</sup>

### *J. The Growing Trend of Backlogs in Bangladesh*

The Bangladesh Law Commission's workshop on identifying the reasons and resolving the determinants of case backlogs in Bangladesh's courts highlighted a few factors and actors, including a shortage of judges. Scarcity of infrastructure, lack of logistical assistance, especially a shortage of staff stenographers, judges' lack of training, police investigative failures, and a section Considering lawyers' proclivity for prolonging legal processes. In addition, other reasons and actors contributing to case backlogs have been highlighted by various news sources and media reports, including a paucity of judges, deficient police investigation, the absence of witnesses, and a part of lawyers unwilling to settle the case.<sup>78</sup>

The administration has made several steps to clear case backlogs, including launching the Judicial Portal on December 24, 2016, to ensure everyone receives justice. Despite several measures to reduce case backlogs, the number of overall outstanding cases is 35, 82,347, according to statistical

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<sup>77</sup> Milan Hossain, *supra* note 15.

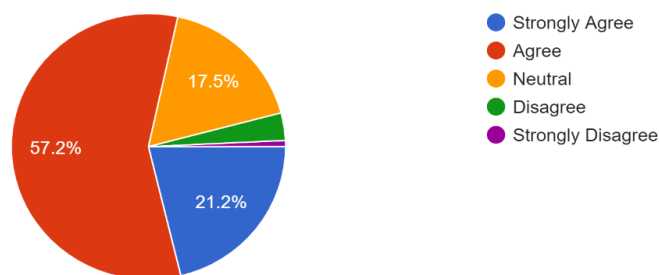
<sup>78</sup> *Ibid.*

data published by the High Court Division of the Supreme Court of Bangladesh. Within the total pending cases, the number of waiting for criminal cases is 17, 25,270.<sup>79</sup> According to the Supreme Court of Bangladesh, High Court Division, the number of cases pending in Bangladesh courts from January 1, 2019, to March 31, 2019, was 35,82,347.<sup>80</sup>

### *K. Respondent's Perception on the Reasons for Backlogs*

4.The fact that the number of cases is growing as a result of a lack of witness protection legislation.

269 responses



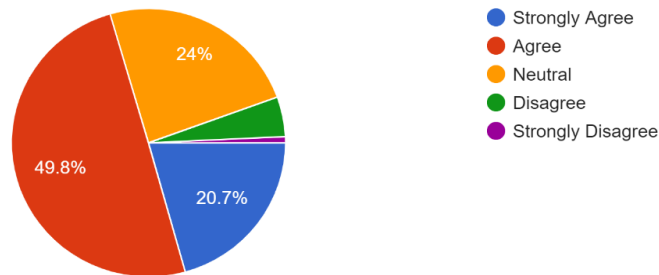
**Figure 6.** *The connection between growing cases and witness protection law*

In this question, the researchers want to connect growing cases and witness protection law. The authors argue that the number of cases has increased due to the lack of witness protection law. The authors argue that the insecurity of the witness lengthens the case dissolution period. As the cases took longer, the new cases piled on the old ones, ultimately showing the connection between growing cases and witness protection law. In Figure 01, 57.2% of respondents agree, 21.2% strongly agree, 17.5% are neutral, 3.3% disagree, and 0.7% strongly disagree. Therefore, this percentage of the respondents has provided maximum feedback similar to this paper's arguments.

<sup>79</sup> Mizanur Rahman, *supra* note 23.

<sup>80</sup> *Ibid.*

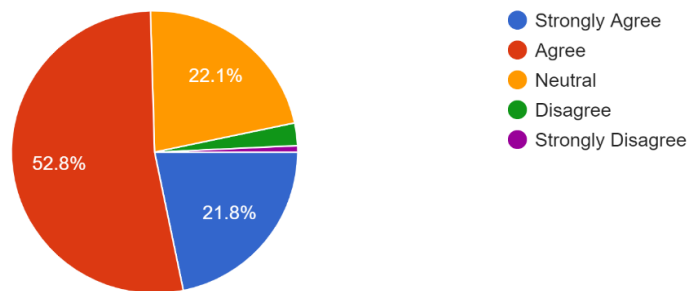
5. The number of pending cases and backlogs will be decreased if witnesses may testify in safety.  
271 responses



**Figure 7.** *Witnesses' safety measurements against pending cases*

The respondents find safety is one of the major essentials to decrease the number of pending cases. In Figure 02, 49.8.7% of respondents agree, 20.7% of respondents strongly agree, 24% of respondents are neutral, 4.8% of respondents disagree with the question, and 0.7% of respondents strongly disagree.

8. If the witness can testify safely, the ongoing case will be settled easily.  
271 responses



**Figure 8.** *The safety of the witness satisfied to settle cases on time*

The respondents emphasise the witnesses' safety while testifying before the court. Ensuring safety would smooth the trial experience of the parties. Therefore, the trial would be completed on time. In Figure 03, 51.8% of respondents agree, 29.8% strongly agree, 22.1% are neutral, 2.6% disagree, and 0.7% strongly disagree with the question.



Even though witnesses offer their crucial testimony without expecting anything in return, the accused have been known to intimidate them differently. In addition to offering them money, the offenders attempt to compel them to manage them with the help of their friends, acquaintances, and family members. There are many reasons witnesses choose not to testify, and many times they are targeted, making them frightened to do so in the future. The case continues to be pending daily, adding to the court's backlog. The backlogs would be minimised if separate legislation were passed for the witnesses, which would benefit the witnesses.

## V. CONCLUSION

The study centred on answering the connotation of the correlation between witness protection law and a backlog and the witness protection law raised in the earlier part. At the outset, views from respondents were gathered based on the general opinion that the safety of the witnesses should be protected and the need for particular legal protection of witnesses should be addressed. Later, in the following heading, the respondents' perceptions of the backlog of cases and the links between the rising number of criminal cases and the absence of witness protection laws were considered. Additionally, the number of criminal cases has disrupted and complicated the judicial system, which appeared in the paper based on the opinion of most respondents. This study highlighted the process in which the enactment of the witness protection law could decrease the backlog of cases. By enacting witness protection law, the safety of the witnesses would be ensured. While the case backlog issue would not be minimised, witness protection law must be enacted and implemented.

## ACKNOWLEDGMENTS

None.

## COMPETING INTERESTS

The authors declared that they have no conflict of interest.

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