



## HOSTILE WITNESS: ITS IMPACT ON TRIALS AND JUSTICE DELIVERY SYSTEM

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### **ABSTRACT**

A witness, much like the complainant and the accused, is an important aspect of the case. The witness assists the court in the path of discovering the truth by giving the evidence of information relating to the offence. The witness is considered to have been turned hostile when they retract a statement in the court, during the trial, a statement that they had previously given in front of the police regarding the commission of a crime which they had knowledge about. A hostile witness can ruin the most solicitously constructed cases. There are a few reasons for the witness to turn hostile, the major one being the lack of proper law and scheme for the protection of the witness during and after the trial along with the grueling cross examination, courtroom intimidation and frequent adjournments. The asymmetrical distribution of rights, wherein the offenders have a range of rights both constitutional and legal and the witness have a limited range of them i.e., expressed, and implied, turns the witness helpless and hostile. These scenarios have become so wide spreading our system that even the supreme court considered it to have become” a way of life in the law courts.”Thus, the current, crumbling scenario calls for immediate introduction of new laws and rights for the witnesses and establishing a proper system for the witness protection.

This paper aims to analyze the issues of hostile witnesses and their effect on the justice. It attempted to know why and in what conditions the witnesses turn hostile. The paper additionally critically reviews witness protection in the light of significant legal provisions and the perspectives of the judiciary in protecting the witness.

**Keywords:** Witness Protection, Hostile Witness, Judiciary, Justice, Criminal Justice System

### **INTRODUCTION**

A witness plays one of the most principal roles in the justice system of all the countries. A witness is the person who has some relevant information and knowledge regarding the commission of a crime. In the words of Wadhwa J., “A criminal case is built on the edifice of evidence, evidence that is admissible in law. For that, witnesses are required to be classified that whether it is direct evidence circumstantial evidence”<sup>1</sup>. Therefore, it can be said that a case is constructed around the testimony of a witness. A witness can further be classified into the category of child witness, interested witness, eye witness, hostile witness, related witness, independent witness, solitary witness, material witness, trap witness, expert witness, and official witness.

As per the dictionary a witness is described as someone who is present at an incident and can provide details about it. “A witness is described as someone who sees, knows, or vouches for something, or as someone who gives testimony under oath or affirmation in person or by oral or written deposition,” or by affidavit.” (Garner, 2003)

<sup>1</sup> Swaran Singh v. State of Punjab, A.I.R. 2000 S.C. 2017(India)



Jeremy Bentham, a great philosopher, and jurist voiced his understanding and said that “witnesses are the eyes and ears of justice”, but what happens if the witness themselves is incapacitated for acting as the eyes and ears of justice as stated in the case of *Zhira Habibullah H. Sheikh V. State of Gujarat*<sup>2</sup> This kind of incapacitation can be a result of several factors which turn the witness hostile.

### HOSTILE WITNESS

A hostile witness is one who gives some information to the best of their knowledge or an eyewitness account of the criminal event and helps the prosecution build a convincing case, but later, during the trial in the court, retracts their statement or gives a different or altered version of the happenings of the criminal event.

The term ‘hostile witness’ originates from the common law where it was used for the first time as a defence against “Mischiefs of Tricky Witnesses” who intentionally sabotages the case of the party calling that person as a witness by providing false testimony. It was felt that these kinds of actions were destructive, not only for the interest of the litigating parties but also for the courts in their aim to seek the truth and provide justice. The English statutory law recognizes the offence of hostility as perjury as per the Perjury act, 1911. Thus, the Common Law laid down some characteristics of a “hostile witness” such as “not desirous of telling the truth at the instance of the party calling him” or “the existence of a ‘hostile animus’ to the party calling such a witness.”

However, the term ‘hostile witness’ has not been defined explicitly anywhere in the Indian law. The term hostile is neither used nor described anywhere. In a criminal trial when a witness who is summoned to produce evidence in the court, when does not confirm their previous statement recorded by the investigative agency, then they are termed as an adverse witness, adverse being the term borrowed from the Common Law just like ‘unfavorable’ and ‘alien.’

Section 154 of Indian Evidence Act, 1872 only talks about permitting such questions as may be asked in the cross examination. Secondly, nowhere does it mention the need to declare a witness as ‘hostile’ and thirdly, the judicial consideration is only to be invoked when the court feels that “the attitude disclosed by the witness is destructive of his duty to speak the truth.”

First time the concept of hostile witness arose was in the case of, *Sat Paul v. Delhi Administration*<sup>3</sup> in which the Supreme Court Stated that, “A “hostile witness” is described as one who is not desirous of telling the truth at the instance of the party calling him, and an ‘unfavorable witness’ is one called by a party to prove a particular fact in issue or relevant to the issue who fails to prove such fact, or proves an opposite fact.” In the case of *R.K.Dey V. State of Orissa*<sup>4</sup> was mentioned that even if the testimony of the witness goes against the interest of the party calling him, he will not be called hostile if he is speaking the truth.

<sup>2</sup> *Zhira Habibullah H. Sheikh V. State of Gujarat*, 2006 3 SCC 374(India)

<sup>3</sup> *Sat Pal vs Delhi Administration*, 1976 AIR 294(India)

<sup>4</sup> *R.K.Dey V. State of Orissait*, 1977 SCR (1) 439(India)



Thus, an unfavorable testimony cannot declare a witness as hostile because hostility is when a false statement is made in favour of the defence due to enmity, fear, or intimidation.

### **REASONS FOR THE WITNESS TURNING HOSTILE**

Mr. Soli Sorabjee, the former Attorney General has rightly stated that, “Nothing shakes the public confidence in the criminal justice delivery system more than the collapse of the prosecution owing to witnesses turning hostile and retracting their previous statements.”<sup>5</sup>

The instances of a witness turning hostile have been seen a few times in the courts. Some of the sensational ones being the Jessica Lal case, Best bakery case and BMW case. To get justice in a country like India, one must provide proof in the courts and oftentimes the witnesses are the ones who provide that required proof. Acquittals, in many cases, are the results of the witness turning hostile. There are many reasons which attribute towards a witness turning hostile, some of them are:

- **ABSENCE OF WITNESS PROTECTION DURING AND AFTER TRIAL** - Oftentimes the convicts in the cases are well connected and can use their ways to intimidate the witness with threats of retaliation or even actual physical violence. It is common for a witness being assaulted, harmed, or murdered even before giving evidence in the court. The lack of police protection for these witnesses during the ongoing trial or even after it, makes them turn

hostile and retract their statements.

- **USE OF THREAT AND INTIMIDATION**- The witnesses are threatened and intimidated during trials and even before it. This threat on their lives or the lives of their loved one makes them turn hostile. “Wrong convictions and wrong acquittals both damage society,” stated the Supreme Court in the case of Krishna Mochi v. State of Bihar<sup>6</sup>. The Supreme Court also noted that the reason these witnesses refuse to go against the accused is because they fear their safety, especially when the accused are hardened criminals, people with power or habitual criminals.

- **DELAY IN DISPOSAL OF CASES** - A trial can be long, extensive, and exhaustive for anyone who is a party to the case because the justice system is extremely slow and this inordinate delay makes the witness frustrated. This further leads to them becoming hostile so that they do not have to go through with this ordeal and get over it without any further delay.

- **DEFAULTS AND DELAY IN PAYMENT OF ALLOWANCES**- It was mentioned in the 154th Report of the Law Commission of India that the allowances given to the witnesses are insufficient and it demanded an immediate payment whether they are investigated or not. According to the Criminal Procedure Code, and criminal court can “order payment, on the part of the Government, of the appropriate expenses of any complainant or witness attending for the purpose of any investigation, trial, or other proceeding before such Court under this

<sup>5</sup> C.P. Rabindranath, The Haunting Witness (Prowess Publishing, 2020)

<sup>6</sup> Krishna Mochi v. State of Bihar, A.I.R. 1961 Mad 92



Code,” subject to any rules made by the state government. However, they are still not paid the adequate allowance.

The Supreme Court of India also realized these factors and expressed its concern on the hostility of witnesses in the Swaran Singh case and stated that:

“A criminal case is built on the edifice of evidence, evidence that is admissible in law. For that, witnesses are required, whether it is direct evidence or circumstantial evidence. Here are the witnesses who are a harassed lot. A witness in a criminal trial may come from a far-off place to find the case adjourned. He must come to the Court many times and at what cost to his own-self and his family is not difficult to fathom. It has become a fashion to have a criminal case adjourned repeatedly till the witness tires and he gives up. It is the game of unscrupulous lawyers to get adjournments for one excuse or the other till a witness is won over or is tired. Not only that a witness is threatened; he is abducted; he is maimed; he is done away with; or even bribed. There is no protection for him. In adjourning the matter without any valid cause, a Court unwittingly becomes party to injustice. A witness is then not treated with respect in the Court. He is pushed out from the crowded courtroom by the peon. He waits for the entire day and then he finds that the matter adjourned. He has no place to sit and no place even to have a glass of water. And when he does appear in Court, he is subjected to unchecked and prolonged examination and cross examination and finds himself in a hapless situation. For all these reasons and others, a person abhors becoming a witness. It is the administration of justice that suffers.

Then appropriate diet money for a witness is a far cry. Here again the process of harassment starts and he decides not to get the diet money at all.”

This statement by the Supreme Court aptly sums up all the problems faced by the witnesses during the trial and with extension, in the criminal justice system.

### EVIDENTIAL VALUE OF STATEMENTS GIVEN BY A HOSTILE WITNESS

SC in numerous decisions held that the assertion of a witness to be hostile does not ipso facto deny the proof, and it is presently established that the portion of proof that is beneficial to all parties can be exploited however the court before which such dependence is put should be incredibly cautious in accepting such proof. The judgment was given by SC in State of U.P. v Ramesh Prasad Misra<sup>7</sup>. It is well established rule that if a hostile witness gave declaration for the prosecution or the accused, their declaration will not be totally excused; rather, it will be exposed to critical examination, with the piece of the declaration that is reliable with the formal accusation or protection contention being acknowledged.

On the off chance that the court imagines that the witness's credibility has not been broken during the process, he can permit, on account of other proof on the record, the piece of his declaration that he considers to be reliable and follow up on it in the wake of perusing and assessing the witness's proof overall with due alert and care. As was decided in the case K. Anbazhagan v director of Police<sup>8</sup>.

As indicated by Indian law, on the grounds that an individual has become hostile does

<sup>7</sup> State of U.P. v Ramesh Prasad Misra, A.I.R. 1996 SC 2766

<sup>8</sup> K. Anbazhagan v director of Police, A.I.R. 2004 SC 524



not imply that his whole contention ought to be excused<sup>9</sup>. In *State of U.P. V. Ramesh Prasad Mishra*<sup>10</sup>, "It is the law that the hostile witness's argument to be taken as evidence would not be fully dismissed only because the individual has strayed from his obligation to speak the truth or has not spoken in the prosecution's favor. However, in such a situation, the court may scrutinize the witness's testimony and dismiss only the parts that are inconsistent with the prosecution's case or arguments."

### **LEGAL PROVISIONS IN WITNESS PROTECTION**

An amusing circumstance that is apparent in our legal situation is the confound of rights between the accused and the person in question or the witness. This prompts the making of a circumstance where the witnesses are rendered defenseless because of the lack of rights available with them (when contrasted with an accused), which adds to them turning hostile.

The need to give protection to witnesses has been over and again focused by the Apex court to guarantee a free and reasonable trial. In spite of the fact that the dust on this point does not give off an impression of being settling, there are many interconnected legal and procedural issues that include understanding. The Supreme Court has decided as a rule that the witness should be treated with care and consideration and that the state is answerable for his protection. Be that as it may, the strategy for accomplishing these objectives still cannot seem to be resolved. Since India does not have a proper system for witness security, the issue becomes critical.

In India, there is no reasonable law that protects witness, as there is in numerous different nations. The Indian Evidence Act of 1872, has a couple of clauses. Ss. 151 and 152, which protect witnesses from indecent, outrageous, or offending inquiries, just as questions planned to offend or affront them. Aside from these provisions, there is no provision in India for witness protection. In *NHRC versus the State of Gujarat*<sup>11</sup>, the SC said that 'No law has yet been passed, not so much as a plan has been outlined by the Union of India or by the state government for giving security to the witnesses.' The Supreme Court said, "There comes a time when genuine and undiluted considerations are to be offered for witness protection so that the truth is brought under the steady gaze of the Court, justice wins, and the trial is not decreased to a sideshow. Legislative strides to guarantee that altering witnesses, victims, or informants is restricted have become an earnest and unavoidable need of the day."

The Criminal Law (Amendment) Act, 2005 (No.2 of 2006) went into effect on April 16, 2006. The Penal Code, the Code of Criminal Procedure, and the Evidence Act have all been amended by the said Act. The Indian Penal Code has been amended to incorporate Section 195A, which makes it unlawful to compel or instigate somebody to give false proof. Section 195 of the Cr.p.c. has additionally been revised because of the previously mentioned amending Act. The court has the authority under Section 154 of the Evidence Act to allow the person who considers a witness to ask him any question that might be asked in questioning by the opposing party. Judicial proclamations exist to help the possibility that a hostile witness's declaration does not need to be dismissed

<sup>9</sup> *Syed Akbar V. State of Karnataka* 1980 (1) S.C.C. 30 (India)

<sup>10</sup> 7 (1996) 10 S.C.C. 360

<sup>11</sup> 2 2003(9) SCALE 329



exclusively in view of their hostility. The amending Act added a subsection to Section 154 of the Evidence Act, incorporating the previously mentioned theory into the law. The outcomes of these clauses still cannot seem to be resolved. The issue of hostility in many key cases has raised genuine questions about the country's legal system

### **FINDINGS**

One of the significant issues in India's justice delivery system is hostile witness, and one of the significant explanations behind this is the safety of the witness during and after the preliminary. Witnesses in cases including notable people are especially inclined to criminal intimidation. This includes lawbreakers utilizing power or cash to convince witnesses to pull out proclamations made about criminals during the trial. In the current circumstance, it is critical to give witness protection, particularly in instances of heinous crimes like assault, murder, and other financial offenses, yet tragically, most nations all throughout the planet, including India, need satisfactory laws relating to witness protection and security. For the security of witnesses, a comprehensive law is required. Witnesses are not just uncertain without complete enactment; however, they additionally have no solution for the wounds they have endured.

The need to give protection to witnesses has been over and again pushed by the country's apex court to guarantee a free and reasonable trial. In spite of the fact that the dust on this point does not seem to be settling, there are many interconnected legal and procedural issues that include the agreement. The Supreme Court has decided by and large that the observer should be treated with care and thought, and that the state is liable for his

security. In any case, the method for accomplishing these objectives presently cannot seem to be resolved. Since India does not have a conventional instrument for witness protection, the issue becomes critical. Lately, India has seen a sharp ascent in the number of hostile witnesses, raising worries about witness safety in criminal trials. Note that India lacks an effective law to protect witnesses of crime, because of which numerous witnesses have gotten antagonistic during preliminaries, deterring the way that reaches towards justice. Individuals' faith in the courts is likewise decreased because of the issue of witnesses turning hostile toward the criminal justice system. The increasing pace of acquittals would give the impression to the overall population that the court is deciding the situation based on incidental contemplations, debilitating the community's trust in the organization of justice and making residents lose faith in the judiciary.

### **CONCLUSION**

Witnesses need more help than they are presently getting. We need to pass severe witness protection laws that consider the needs of witnesses in our system. The media, as well, bears a lot of duty. Rather than distorting the case, they should attempt to give a positive and logical record of it. The courts and the enactment should decide to guarantee that witnesses are secured. The more protection offered to witnesses, the more witnesses would show up in court to give their testimony.

Extended trials ought to be halted no matter what. This accumulation of cases that take a long time to resolve, as well as the regular deferment of cases, ought to be wiped out. The principles administering the payment of allowances should be improved with the goal



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that a helpless witness does not get hostile because of their frustration at having lost an enormous amount of cash. The ease with which bail is conceded to the accused in return for him threatening the witness ought to be examined. There is an earnest requirement for police reforms in the way inquiries are done. If and until the witness is made to comprehend that the system is designed for him and that he is at ease with it, a hostile witness would be an incessant phenomenon in any case.

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