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RELIABILITY OF EYEWITNESS TESTIMONY

AUTHORED BY - APARNA KUMARI

This report aims to highlight flaws in the reliability of eyewitness testimony. Even while eyewitness testimony is a powerful kind of evidence in convicting the guilty, it is tainted by repressed memories, biases, and distortions. The renowned jurist and philosopher Jeremy Bentham once remarked, "Witness is the sight and ears of justice." Memory may therefore be either very distinct or quite hazy. If there is no impartial proof, both are illusive. For a considerable amount of time, the witness evidence in convictions involving astronomers was considered conclusive¹. A jury could only be convinced of guilt by a written acknowledgment from the defendant. It is a turning point when a witness gestures towards the witness stand since it signifies that the case is actually admissible in court.

Keywords- Identification of eyewitnesses, proof, reliability, evidence, testimony, accuracy, dependability, and precision.

STATEMENT OF PROBLEM

The problem that I noticed while researching this topic is that eyewitness evidence is subjective and difficult to establish precise measurements or facts due to its complexity and inconsistent nature. Ethical considerations are crucial when researching eyewitnesses, especially when handling potentially traumatic incidents. Results may differ significantly between cases, and credibility can be affected by suggestibility, leading questions, and societal pressure. Understanding the legal framework and court rulings pertaining to eyewitness testimony is also challenging. Researchers should be aware of potential biases and be cautious about access to relevant case files, interviews, and data.

¹ Fahsing I. A., Ask K., Granhag P. A. (2004). The man behind the mask: Accuracy and predictors of eyewitness offender descriptions. *Journal of Applied Psychology*, 89, 722–729.

Review of Literature

1. Title- “The man behind the mask: Accuracy and predictors of eyewitness offender descriptions” by Ivar Fahsing, Karl Ask and Pär Anders Granhag

Psychology has been slow to recognize the relationship between precision and confidence in eyewitness identification. Memory can be manipulated, and evaluating one's memory may unintentionally reinforce it, increasing confidence in recognizing a suspect. The original memory test usually yields the primary unadulterated forensic evidence, which should be considered when evaluating eyewitness recollections. It is crucial to distinguish between untainted memory tests and tainted memory tests, as they are often confused. Eyewitness testimony must be evaluated for reliability using suitable testing procedures, confidence, and uncontaminated settings. The original, pristine memory test should be the primary criterion for evaluating eyewitness identification credibility.²

2. Title- Repeated eyewitness identification procedures with the same suspect by [Stebly, Nancy K. Dysart and Jennifer E.](#)

Eyewitness evidence is often viewed as untrustworthy due to factors such as high stress levels, weapon presence, racial disparities, short exposure times, and long retention times, which are believed to influence the correlation between accuracy and confidence in crime. Research, however, suggests that these factors have little effect on the accuracy of first identifications made with high confidence. To be clear, total accuracy is the probability of memory errors, which can be reduced in unfavorable memory situations. On the other hand, the majority of suspect identifications made with high confidence continue to be reliable. High-confidence identifications are often as accurate as ever, even in difficult situations.³

3. Title- The characteristics and results of eyewitness identification procedures conducted during robbery investigations in Houston, TX by William Wells, Bradley Campbell, Yudu Li and Stryker Seindle.

In 1977, the U.S. Supreme Court established rules for eyewitness testimony, stating fairness and reliability. However, recent research questions these factors' reliability for accurate identification, prompting state and federal courts to establish new rules for expert and scientific evidence. In *Perry v. New Hampshire*, the U.S. Supreme Court decided

² Steblay N. K., Dysart J. E. (2016). Repeated eyewitness identification procedures with the same suspect. *Journal of Applied Research in Memory and Cognition*, 5, 284–289.

³ Wells W., Campbell B., Li Y., Swindle S. (2016). The characteristics and results of eyewitness identification procedures conducted during robbery investigations in Houston, TX. *Policing: An International Journal of Police Strategies & Management*, 39, 601–619.

recently that an extra review procedure was not required to determine if an eyewitness identification was reliable. In this instance, the witness happened to see the suspect outside the window and recognised them, while the police were only obtaining a description of the culprit. It was not the police's objective to establish a formal identifying procedure. Therefore, the Court determined that the Due Process Clause does not require a separate judicial evaluation of the eyewitness identification's reliability.⁴

4. Title- Identification of Culprit: Assessing Eyewitness Identification by Thomas D Albright.

Scientific, technical, and psychological advancements have highlighted the untrustworthiness of eyewitness testimony. Psychologically, professional counsel has not improved, and pressure on witnesses to identify offenders has led to fewer credible identifications. Technologically, eyewitness statements often contain errors, and scientific advancements suggest that witnesses could fabricate recollections to provide information the prosecution wants. DNA testing of previous sexual assault cases revealed serious errors and incorrect convictions. Groups like "Convicting the Innocent" and "Innocence Project" further highlight this issue.⁵

OBJECTIVE

1. To assess the impact of age-related memory loss on the reliability of eyewitness accounts in various crime scenarios, comparing older and younger individuals.
2. Analyse resistance to false confessions and contributing factors.
3. To evaluate the role of attentional control in eyewitness testimony by examining how individuals with varying attentional abilities recall details of criminal events and suspect descriptions.
4. To investigate the credibility of eyewitness testimony in cases involving "last seen" evidence, particularly when there are no direct eyewitnesses, and to analyze the reliability of testimonies from juvenile witnesses.
5. Study memory accuracy regarding emotional versus monotonous experiences.
6. To explore the differences in eyewitness testimony between adults and children, with a specific focus on how preconceived notions, biases, and prior experiences shape their

⁴ Thomas D Albright, Identification of Culprit: Assessing Eyewitness Identification (first published in 2014) 170.

⁵ Roper, R., & Shewan, D. (2002). Compliance and eyewitness testimony: Do eyewitnesses comply with misleading expert pressure

⁷ during investigative interviewing? *Legal and Criminological Psychology*, 7(2), 155-163.

interpretation of events.

7. Assess the accuracy and limitations of children as eyewitnesses in various settings.

HYPOTHESIS

- High-confidence suspect identifications remain reliable despite challenging conditions, suggesting a limited impact of stress, weapon presence, exposure times, and retention times.
- Enhanced understanding of eyewitness factors, memory, and forensic techniques can improve reliability in legal proceedings.
- Evaluating eyewitness identification reliability should prioritize untainted memory tests, considering confidence and uncontaminated settings for precise assessments.

RESEARCH QUESTIONS

- a) Is eyewitness testimony always accurate?
- b) Is it important to consider suboptimal memory conditions when relying on eyewitness testimony?
- c) Do eyewitnesses submit to deceptive "expert pressure" when being questioned for an investigative undertaking?
- d) Does only the first memory test count?
- e) Has the Indian judiciary made significant progress in addressing the issues related to memory defects, biases, and prejudices that impact witness identification and eyewitness accounts?

RESEARCH METHODOLOGY

There is a significant deal of faith placed in eyewitness evidence. There are several reasons for this. First of all, investigators and witnesses—like Sherlock Holmes—are depicted in literature and popular culture as having incredibly clear memories. Second, because crimes and accidents are singular, distinct, stressful, and frequently horrifying events, individuals feel that they should be remembered. Since memories are built on information learned after the original experience, stress and anxiety can actually impair memory growth. Individuals tend to underestimate how quickly they forget stuff. Third, spectators tend to be specific and self-assured, which makes their judgments persuasive but not necessarily accurate. Unconsciously, memory distortion is common. Witnesses accept their version of events as true, regardless of how inaccurate they may

be.

METHOD

Section 3 of the Indian Evidence Act, of 1872⁶, categorizes witnesses into two main categories: Statement of Witnesses and Documentary evidence. Eyewitness testimony, provided under oath, is highly valued as evidence in Indian law. In *Madhu Madhura Atha vs. the State of Karnataka*, it was determined that witnesses can provide information verbally or in writing. Section 118 of the Indian Evidence Act⁷ allows everyone to testify in court unless legally disabled, and one witness may suffice to establish a case.

The present study is a doctrinal study i.e., reference from available secondary sources like articles, empirical studies, journals, reports, etc. to study the present question in hand.

ANALYSIS OF RESEARCH PROBLEM

Eyewitness testimony is when someone who saw or was part of a crime provides an account of what happened. This can include descriptions of the event or the people involved, like identifying suspects or important items such as weapons or vehicles. For a long time, research has looked into various factors that can affect the accuracy and amount of information in eyewitness testimony. As a result, we've come to realize that such testimony may not be as trustworthy as we once believed.

Eyewitness evidence can be impacted by a number of variables, including as age-related memory loss in both the offender and the witness. An elderly person's recollection might not be as trustworthy as one from a younger age. How much information a person remembers might also depend on the kind of incident they are asked to recollect. These elements might cause witnesses to mistrust their own memories, which would make juries doubt the veracity of an eyewitness's evidence.⁸

Depending on their capacity to focus, eyewitnesses might be either trustworthy or untrustworthy. While some people can focus on several aspects at once during an experience, others cannot,

⁶ Indian Evidence Act, 1872, s. 3(1).

⁷ Indian Evidence Act, 1872, s. 118.

⁸ Jenkins, L. (2019, February 15). Memory in the Real World: How Reliable is Eyewitness Testimony? Retrieved from <https://www.psychreg.org/how-reliable-eyewitness-testimony/>

which leads to a less accurate recollection. It differs depending on the individual. In order to assess an eyewitness's credibility, several criteria must be taken into account. It's amazing how few information about a crime may have a big influence on someone's memory of the entire incident. For instance, individuals could recall the presence of a weapon but not the look of the offender. This raises concerns about the validity of eyewitness accounts in general and how to determine which ones to believe in particular.

Memory has a major role in eyewitness testimony. A person's testimony may become less trustworthy if they have trouble remembering things clearly. Similar to a mental notepad, working memory is where we store information. If it's weak, we have trouble storing information in our long-term memory and might not remember things that happened a long time ago. Conversely, a person with a good working memory is better able to recall information and retain it in long-term memory, which enhances the credibility of their testimony.

According to recent research, stress may have a detrimental effect on our recollection of a crime, making it more difficult to recall specifics like the perpetrator's identity or the exact events that occurred. However, a detailed examination of the findings reveals that the influence of emotions on testimony is not simple.

The primary cause of erroneous convictions in around 52% of cases is misidentification or inaccurate eyewitness testimony. When there are no direct eyewitnesses in murder or rape cases, "last seen" evidence is frequently utilised to get convictions. Courts utilise this evidence in conjunction with details gleaned from the accused's confession to a police officer to support the conviction. But depending just on eyewitness accounts has its drawbacks, as demonstrated by a case in which the evidence of a ten-year-old was utilised.⁹ The defence attorney for the accused said that since juvenile witnesses are susceptible to coaching or influence, their testimonies have to be supported by further data. Nevertheless, the court dismissed these worries with little consideration and found the accused guilty of a crime under Section 302 of the Indian Penal Code. Children are especially susceptible to being led astray by inquiries, and they may also be swayed by false information conveyed to them after an occurrence. They are less prone, nevertheless, to allow preconceived notions, prejudices, or prior experiences to color their interpretation of what transpired. For example, adults are more likely than children to recall, in study trials, that a

⁹ Rattner, Arye. Convicted but Innocent: Wrongful Conviction and the Criminal Justice System, 12(3) Law and Human Behavior, 283 (1988).

nonviolent bank heist featured a weapon. Additionally, adults are more likely to remember reading a word incorrectly that wasn't included in a list of terms associated with a specific subject. With terms like "dream," "pillow," "blanket," and "bed" in the list, adults may incorrectly recall that "sleep" was also included.

CONCLUSION

Eyewitness testimony is crucial in court for identifying accused individuals, but it can be inconsistent and untrustworthy, leading to false convictions. In cases without forensic or physical evidence, sworn witnesses' testimony is crucial. Forensic science and DNA analysis are less prone to error, making them more reliable. However, memory loss, inattention, stress, or trauma can lead to untrustworthy eyewitness reports, resulting in erroneous convictions and a miscarriage of justice.

Eyewitness testimony in criminal trials can be challenged based on how it was obtained. Eyewitness memory is generally reliable when conditions are met, such as not being exposed to misleading or distorted information, being the first time, the memory is examined, not being manipulated, and being guided by the witness's confidence.¹⁰ Unreliable eyewitness memory often results from factors other than a malfunctioning memory system. Disregarding the vital information of confidence can lead to serious errors, including wrongful convictions. Most innocent individuals supposedly wrongfully convicted due to unreliable eyewitness memory ended up in prison. The perspective that eyewitness memory is fundamentally unreliable is not realistic.¹¹

Adopting new advancements in forensic science and psychology is how Indian courts can get better. They should consider the choices they made in the past when they frequently placed too much stock in the veracity of eyewitness accounts and disregarded other important information. Using post-conviction DNA testing, groups such as the Innocence Project have attempted to reverse erroneous convictions in the United States. They have shown that errors in eyewitness testimony accounted for a sizable 70% of these erroneous convictions. Although we don't have precise statistics for India, it's probable that there is a major issue there as well.

¹⁰ Woolnough P. S., MacLeod M. D. (2001). Watching the birdie watching you: Eyewitness memory for actions using CCTV recordings of actual crimes. *Applied Cognitive Psychology*, 15, 394–411.

¹¹ Yates S. Q. (2017, January 6). *Memorandum for heads of department law enforcement components, all department prosecutors*. Washington, DC: Office of the Deputy Attorney General, U.S. Department of Justice. Retrieved from <https://www.justice.gov/archives/opa/press-release/file/923201/download>