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UNVEILING THE SHADOWS: CONFRONTING THE CHALLENGE OF HOSTILE WITNESSES IN INDIA'S LEGAL LANDSCAPE

AUTHORED BY - BLESSEN TOM CYRIAC & JUSTIN GEORGE ALEX

ABSTRACT

In the light of the recent incidents where witnesses became hostile in the Madhu lynching case of Kerala and the Mecca Masjid blast case, has led to a large outcry for the implementation of the witness protection scheme which protects the witnesses from being harassed or being influenced by the monetary benefits. Restricting justice to the victim is a real matter of questioning the functioning of the judicial proceedings in the country. As stated by Bentham "witnesses are the eyes and ears of justice". Thus, the testimony given by the witnesses should be to the best of their knowledge and hence the testimonies, as well as the person giving out the testimony, should be protected under the law.

The research area of this paper is the protection of witnesses and the research topic is "Unveiling the Shadows: Confronting the Challenge of Hostile Witnesses in India's Legal Landscape." By referring to primary sources like different statutes around the world, case laws and various secondary sources such as books, articles and journals, the author has adopted a doctrinal research methodology. Through this paper, the author intends to find the philosophical background of the existing laws on hostile witnesses in a few countries with more prominence to India. The backlash to justice due to the hostile witnesses and the mitigation of this issue will also be discussed in this paper. The author also tries to support the arguments through a philosophical approach. The author also suggests empirical research using the philosophical aspects mentioned in this paper.

Keywords: Hostile Witnesses, Protection, Justice, Menace, Madhu lynching case, Mecca Masjid blast case, Intimidation

INTRODUCTION

When someone is hostile, he is "extremely unpleasant or aggressive and eager to dispute or fight." In Indian law, the phrase "hostile witness" is not defined. During a trial, a hostile witness is someone who is called by the prosecution counsel to testify in his favor and does not confirm his

prior testimony that was obtained during the investigation. A person is considered an unfriendly witness in common law when he or she is unwilling to disclose the facts in favor of the party who summoned him. During direct examination, a hostile witness supports the opposing party or delivers unfavorable testimony to the calling party. The judge is authorized to label someone unfriendly based on the examiner's request. When a key witness becomes uncooperative, the court may need to reassess the weight given to their testimony and may rely more heavily on circumstantial evidence to decide the case. Conversely, if the witness is not crucial, their testimony might be considered unnecessary, and the court may seek alternative, more dependable evidence. The significant impact a witness can have on a case can be detrimental if the court must disregard their testimony and depend on other evidence. In instances where the involved parties are influential individuals, the trial could be influenced by biases related to their status. The court should ignore such biases and ensure they do not guide the outcome of the trial.

In a democratic setting, citizens who lose trust in the judicial system for settling their issues in a court of law or who are rendered helpless may turn to extra-legal methods, which will undermine the fundamental foundation of democracy, the rule of law. The idea of hostile witness exists solely in literature. There is no longer any enforcement of legislation concerning hostile witnesses. Thus, the laws concerning the adverse witness were in doubt.

IMPORTANCE OF WITNESSES IN THE LEGAL PERSPECTIVE

The function of a witness is critical in every country's cardinal justice system. They help the court find the truth by testifying in a case. As the Scottish philosopher David Hume has said in his work REDUCTIONIST EPISTEMOLOGY OF TESTIMONY "Testimony is a unique source of belief".¹ This implies that the words said by each witness certainly impact the society, thereby either rendering or opposing justice. When assembling evidence for a legal case, witnesses are crucial. At a trial, attorneys call witnesses to supplement the evidence in order to more effectively either present their case or defend it against prosecution. As of today, even after the evolution of advanced technology and records, witnesses are still likely the most crucial piece of information that can be presented in court.

However, witnesses being hostile is a typical occurrence in the criminal court system. Only a false statement by a witness may bring the prosecution's whole case down. As a result, an increasing number of individuals are losing trust in the system's ability to provide justice to victims. As long as witnesses remain

¹ Faulkner, P. (1998) David Hume's Reductionist Epistemology of Testimony. Pacific Philosophical Quarterly, 79 (4). pp. 302-313. ISSN 1468-0114

hostile and refuse to provide true testimony in court, justice will suffer, and people's trust in the efficacy and reliability of the legal process will be weakened and broken.

RECENT CONSPICUOUS CASES OF WITNESSES TURNING HOSTILE IN INDIA

If going in the chronological order, it is pertinent to note that in the following cases justice was overturned due to the situation of witnesses changing their stand to support the opposing party. If we look in deeply into all this cases it is well settled that in all of these cases there were evidences pertaining to the parties were unduly influenced by either money or muscle power.

On February 22, 2018, a gang of men gagged, and beat up Madhu, a 27-year-old tribesman from Attappady, on suspicion of supposed thefts. When they turned him over to the police, Madhu passed away enroute to the hospital. Internal injuries he had suffered as a result of the beating were the cause of his death.² When Madhu's death sparked a controversy as the images and videos of him being tied up and beaten up circulated on social media for two days, the police eventually detained the suspects. All 16 of the defendants were granted bail, which significantly prolonged the trial and prevented any special prosecutor from taking the matter to fight for his justice. But, recently three months as of the trail began 16 witnesses changed their testimonies within, prompting fears that the prosecution might lose the case. It is in these situations that we see how much the legal system in India have to be refined so as to help a common man in rendering justice and thereby upholding the good conscience and moral of the society.

When looking into the Mecca Masjid blast case, according to reports on April 16, 2018, the trial court cleared Swami Aseemanand and all of the other defendants in the Mecca Masjid case, citing inadequate evidence. Lieutenant Colonel Shrikant Purohit, a key witness in the NIA case against Aseemanand, went hostile, dealing a serious setback to the prosecution.³ Purohit, a defendant in the 2008 Malegaon bombing case, was scheduled to give testimony on a phone conversation he had with Aseemanand during which he identified Sunil Joshi, another terror suspect, as a member of his group. The former counterintelligence officer abruptly changed his story, denying that the NIA had recorded his testimony as a witness in the case and that he knew nothing about the case or Aseemanand. The prosecution case undoubtedly weakened as a result of the destruction of a significant piece of the evidentiary chain.

Further the constitution bench of the Supreme Court in the recent case of *Neeraj Dutta V State (Govt. Of N.C.T. Of Delhi)*⁴ held that the testimony of a hostile witness can be taken into consideration to convict

² "Madhu Case: Court Sends Hostile Witness for Vision Test - the Hindu." *Madhu Case: Court Sends Hostile Witness for Vision Test - the Hindu*, 14 Sept. 2022,.

³ "Hostile Witnesses Hurt Prosecution in Mecca Masjid Blast Case | Latest News India - Hindustan Times." *Hindustan Times*, 17 Apr. 2018,

⁴ *Neeraj Dutta v. State (GNCTD)* Cr A 1669 of 2009 | 15 December 2022

accused if it is corroborated by other evidence. The Supreme Court observed that there is no legal bar to raise a conviction upon a "hostile witness" testimony if corroborated by other reliable evidence. The bench of Justices Abdul Nazeer, B. R. Gavai, A. S. Bopanna, V. Ramasubramanian and B. V. Nagarathna also observed that the fact that a witness has been declared "hostile" does not result in an automatic rejection of his evidence.

REASONS THAT MAY LEAD TO WITNESSES BECOMING HOSTILE

The Honorable Supreme Court, in the case of *Ramesh v. State of Haryana*⁵, identified several factors that contribute to witnesses withdrawing their statements and becoming hostile in court. These factors include:

- 1. Threat/Intimidation:** Witnesses may face threats or intimidation, the severity of which can vary based on the nature of the case and the accused's background. In extreme cases, they may be harmed or even killed to prevent their testimony in court. Such risks deter individuals from serving as witnesses unless they receive assurances of protection.
- 2. The exploitation of influence and financial resources by the defendant:** Often, witnesses are swayed by defendants who enjoy political support and possess substantial financial means. Typically, these witnesses are economically disadvantaged and desperate for money. Capitalizing on the witnesses' precarious situation, the defendant persuades them either to avoid attending the trial or, if they have previously testified, to withdraw their initial statement.
- 3. Extended Legal Proceedings:** In India, it is common for legal cases to endure lengthy periods before reaching a conclusion. Various factors contribute to these delays. Frequent postponements lead to witness exasperation. Justice Wadhwa noted in *Swaran Singh v. State of Punjab*⁶ that witnesses often travel great distances at their own expense to participate in criminal trials. The tendency to defer cases until witnesses are worn out or relinquish is prevalent. Lawyers sometimes orchestrate such delays to obstruct witness testimony. Consequently, the courts inadvertently partake in the denial of justice. This discourages individuals from serving as witnesses and testifying, which in turn detrimentally impacts the administration of criminal justice.
- 4. Manipulation through various methods:** Occasionally, witnesses are swayed to present dishonest statements in court. Defendants entice witnesses with various incentives,

⁵ *Ramesh v. State of Haryana* (2017) 1 SCC 529.

⁶ *Swaran Singh v. State of Punjab* (2000) 5 SCC 668

including monetary rewards or other forms of allurements. Such manipulation compromises the integrity of the trial, leading to situations where the defendant may evade conviction due to the absence of convincing evidence of their guilt.

- 5. Challenges Encountered by Witnesses in Legal Processes:** Throughout the investigation and trial phases, witnesses often confront a lack of proper recognition and are not accorded the respect and dignity they deserve in a courtroom setting.⁷ Witnesses are often required to endure an entire day without adequate seating arrangements. They are not even provided with basic amenities like water. Frequently, cases are postponed, squandering the time of the witnesses who have arrived to testify. Additionally, they face extensive questioning and cross-examination, which can be frustrating, especially when they are unfamiliar with court procedures. Moreover, witnesses are typically not compensated for their expenses, and on the rare occasions they are, the amount is insufficient to cover their costs.
- 6. Lack of Specific Laws to Deter Witness Intimidation:** Currently in India, there is an absence of any definitive programs or legal measures aimed at curbing or averting the intimidation of witnesses. There are no established provisions to ensure that witnesses receive the necessary and sufficient protection and security measures against the defendants. In the case of *Zahira Habibullah Sheikh v. State of Gujarat*⁸, the Supreme Court emphasized the State's responsibility to safeguard witnesses, particularly in high-stakes cases involving influential accused individuals. This protection is crucial to prevent the corruption of trials and to allow the emergence of truth. Witnesses should be able to testify without fear, and the State must uphold the rule of law by defending its citizens' rights equally, regardless of their background or beliefs. The legislature is tasked with creating laws that prevent the accused from manipulating witnesses, victims, or informants. The focus should not be solely on the rights of the accused; a balance must be struck to protect societal interests as well, ensuring the integrity of a fair trial and the effective operation of the criminal justice system.
- 7. Culture of Compromise:** In the case of *Ramesh & Others v. State of Haryana*⁹, the Supreme Court recognized the troubling trend where victims or complainants are often coerced into altering their court testimonies. The court noted an instance where a Dalit girl, after being raped and seeing her assailant released on bail, was threatened with further

⁷ *Swaran Singh v. State of Punjab*, (2000) 5 SCC 668

⁸ *Zahira Habibullah Sheikh v. State of Gujarat* (2006) 3 SCC 374.

⁹ *Ramesh & Others v. State of Haryana* (2017) 1 SCC 529.

harm unless she agreed to a settlement. The immense pressure led to her tragic suicide a year later. Despite the suicide being a direct consequence of the coercion to settle, such forced compromises go unpunished, contributing to a significant number of witnesses ultimately retracting their statements in court.

- 8. Village Compromises and Peer Pressure:** Hostility in legal cases often stems from community or familial unity, political motivations, familial obligations, or different types of financial inducements. These factors can influence individuals to act against their own interests or the interests of justice, leading to compromised testimonies and challenges in legal proceedings.
- 9. No punishment for Hostile Witness:** The issue of perjury is prevalent in many legal cases, yet witnesses who provide false testimony often go unpunished. Even when judges are aware of the dishonesty, formal complaints or penalties are seldom applied. It is the court's responsibility to enforce the legal provisions outlined in Chapter XXVI of the Code of Criminal Procedure to maintain the integrity of the criminal justice system. Despite the existence of Section 193 of the Indian Penal Code, 1860, which prescribes punishment for giving false evidence, it is infrequently enforced, allowing witnesses influenced by pressure, temptation, or intimidation to undermine the judicial process without consequence.
- 10. Use of Stock Witnesses:** The term "Stock Witnesses" describes individuals who are frequently called upon by law enforcement to testify in court when the actual witnesses are unavailable. There is a risk that these stand-in witnesses might be influenced or bribed by the accused. Consequently, if there is no compelling evidence presented, the reliance on such witnesses can lead to the acquittal of the accused.

LAWS IN PLACE AND ARE THE LAWS USED?

The Indian Penal Code (IPC) defines 'providing false evidence' as a crime under the Section 191: "Whoever, being legally bound by an oath or by an express provision of law to state the truth, or being bound by law to make a declaration upon any subject, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, is said to give false evidence".¹⁰ Basically, there is a pretty strong penalty for this offence if someone who is required by law to tell the truth makes a false statement that they know to be untrue. A person found guilty of supplying false

¹⁰ Indian Penal Code, 1860, s. 191

evidence can be sentenced to up to seven years in jail and a fine. Therefore, if a witness alters their evidence at the proceedings from the information they previously given to the investigators, they may be held personally accountable for the crime of perjury. To be able to do this, the witness must have provided a sworn statement prior to the trial, such as when they submit a formal statement to a magistrate in accordance with Section 164 of the Code of Criminal Procedure, 1973.

A statement, whether spoken or written, must be pertinent and legally admissible. The Indian Penal Code also addresses individuals who falsify evidence, including false entries in books, records, or electronic records, or who create fraudulent documents or electronic records. Such entries, if deemed relevant in legal, judicial, or arbitration proceedings, can mislead the deciding authority into making a judgment or forming an opinion based on incorrect information, which constitutes the provision of false evidence.¹¹ When it is established through evidence that an individual has presented fabricated or false evidence, such an individual is considered to have committed an offense under the law and is subject to the penalties stipulated by the law.¹² Under the law, a person is equally accountable if they knowingly use, or attempt to use, false or fabricated evidence as if it were true or genuine, with corrupt intent.¹³ The law also penalizes a witness who makes a false statement in legal proceedings if the statement is accepted as evidence. If the witness knows, suspects, or does not believe the statement to be true, and it pertains to a material aspect of the case, then such an act falls under the category of providing false evidence.¹⁴ The law also includes penal provisions for cases where an individual is subjected to criminal intimidation, threatening harm to their person or property¹⁵ if someone threatens another with the intent to inflict harm, this constitutes the crime of criminal intimidation under the law. Acts that obstruct witnesses from testifying truthfully in court, or that lead to witnesses becoming adverse for the purpose of evidence, are subject to punishment under criminal law.¹⁶ The law prescribes penalties for intimidation that threatens a person's life, property, or a woman's chastity. Courts consider instances where witnesses become hostile and provide non-credible or false testimony as a result of such intimidation.

Even while it is technically feasible to accuse a hostile witness of perjury, this rarely happens. One of the few instances of this really happening was in the Best Bakery massacre case where Zahira Sheikh, who

¹¹ *Ibid*

¹² *Ibid.* s.193

¹³ *Ibid.* s.196.

¹⁴ *Ibid.* s.199.

¹⁵ *Ibid.* s.503

¹⁶ *Ibid.* s.506

was found guilty of providing false testimony in 2006 and given a three-month prison sentence. The Supreme Court also gave her a one-year jail term for contempt of court. But this was definitely an exception. It is also to be noted that in the incidents of Varun Gandhi, BMW, and the murder of Nitish Katara, no perjury charges appear to have been brought towards the witnesses who became uncooperative. Due to the lack of data available for the issue, it is challenging to determine its true scope. Furthermore, the National Crime Records Bureau does not include the number of instances of providing false evidence in their databases. Therefore, it can be noted from the above-mentioned instances that the laws in place are either inefficient or too immature in the instances for as to be used by the court.

NEED FOR AN EFFICIENT WITNESS PROTECTION SCHEME IN INDIA

As a result of the Supreme Court's acknowledgement of the requirement for a 'witness protection system' in India, the Union government was requested to submit a draught witness protection protection programme in *Mahender Chawla v. Union of India*¹⁷. The National Legal Services Authority's proposal was quickly filed by the minister of home affairs. Later, pursuant to Articles 141¹⁸ and 142¹⁹, the top court directed that it be fully implemented across all of India. Thus, a significant statute was passed outside of the parliamentary procedure, which ensures dialogue between interested parties and various stakeholders. In the US, the Federal Witness Security Program, an autonomous federal organisation, not only assists in relocating witnesses who are in danger but also provides them with new identities. This programme has effectively shielded some 18,865 participants since the program's inception in 1971 from intimidation and retaliation.²⁰

The witness protection programme is India's initial attempt to safeguard witnesses. But it has significant drawbacks. The duration of protection is the main issue. The protection's reach has been constrained under the plan for periods of three months. This makes it unnecessary since if protection is lifted, there is still a chance that the accused would threaten you. The second flaw is the classification of witnesses based on the perceived threat. If a dishonest police force or administration is given the power to reduce the feeling of threat and then classify witnesses based on its evaluation, no strategy can succeed. Last but not least, despite the scheme's commitment to safeguarding the privacy of personal information in order to protect the identity of witnesses, it does not sanction any violations of the aforementioned rule, weakening its effectiveness. To stop the release of such sensitive material, an efficient penalty must be put in place. Thus, the scheme does the concept of witness protection no favors in its current form.

CONCLUSION

¹⁷ *Mahender Chawla v. Union of India* SC W.P. (Cr.) No. 156 of 2016.

¹⁸ The Constitution of India, 26 January 1950

¹⁹ *ibid*

²⁰ "U.S. Marshals Service Fact Sheet - Facts and Figures". U.S. Marshals Service. May 18, 2020. Archived from the original on May 18, 2020. Retrieved October 18, 2022

The current legislation does not fix any limitations posed by the hostile witnesses in India. This subject has advanced significantly since the 14th Law Commission Report's initial mention of witness protection in India in 1958²¹. Given that the executive is the biggest litigant in Indian courts, the judiciary has a greater role to play when it comes to witness protection than the legislature. Therefore, even while a statute protecting witnesses is necessary, the judiciary also has a responsibility to shield witnesses, particularly in high-profile cases, from any type of danger, harm, or intimidation.



²¹ Fourteenth Report: Reform of Judicial Administration, New Delhi, Ministry of Law, Government of India Press, 1958