

**THE CREDIBILITY OF A HOSTILE WITNESS**- Shreya Verma<sup>1</sup>**ABSTRACT**

Witnesses are an integral part of any case or trial. Being an integral part, they have a duty towards the case as well as towards justice in general. But sometimes the witnesses do not fulfil this duty of theirs by not testifying in the favour of the party who called them owing to a plethora of reasons thereby, causing the accused to be acquitted and giving a huge setback to the case and justice. Such witnesses are known as hostile witnesses. Owing to an increase in the instances of witnesses turning hostile, more and more culprits are walking away freely, and the aggrieved people are facing injustice. As a result, people have started to lose faith in the justice system. The authors feel that our legal system does not address this issue properly and this further acts as a catalyst in increasing this problem. It is high time that the legislature should come up with some guidelines and laws regarding this menace. Therefore, the authors through this research paper try to throw some light on the concept of a hostile witness, its evidentiary value and credibility in India along with suggesting some measures in order to curb the menace of the same.

**Keywords:** *witness, hostile witness, justice, evidence*

**INTRODUCTION**

A witness is someone who has either himself seen the commission of any offence or event (eye-witness or direct witness) or is related to any matter in some way or the other (indirect witness) and is called upon to appear before a court to testify or give an opinion regarding a matter in question.

Witnesses form a crucial part of any proceeding is it with respect to a civil case or a criminal case. Although independent evidence also plays an important role, a case cannot be decided without taking the evidence of a witness. A witness can direct a case to a whole new level which can have both positive as well as negative

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consequences. But many times what happens is that the witness refuses to testify in court or does not testify in the favour of the party who called him or retracts from his previous statement which can disrupt the rigour of the case. Such a witness is known as a hostile witness who is also known as an adverse witness or an unfavourable witness. Anyone before testifying in the court takes a solemn oath in front of the Goddess of Justice but the witnesses by turning hostile, fail to fulfil this oath. This has started to become a serious concern for the justice system. This is because if the witness is to testify in the favour of the aggrieved party, then because of the witness turning hostile there might be a lack of proper witness evidence and as a result of it, the accused person can walk away freely. This can cause grave injustice to the party who was seeking justice if the accused person was in fact guilty of the offence of which he was accused. This can in turn makes people lose their faith in the justice system and the legal system.

Although the term “hostile witness” is nowhere defined in any statute not even in the Indian Evidence Act 1872, it is gaining significant attention these days. The function of this term is to grant protection against witnesses who deceitfully deviate from their prior statements. The term and its interpretation have come into the picture owing to a plethora of judgements. Although Section 154<sup>2</sup> of the Indian Evidence Act 1872 does not talk about the concept of a hostile witness, the courts have derived this concept from that section only. The term finds its genesis in the common law system. The term traces its origin to the case of *Sat Pal v. Delhi Administration & Others*<sup>3</sup>. In this case, the Supreme Court of India coined and defined the term for the first time.

### **EVIDENTIARY VALUE OF A HOSTILE WITNESS IN INDIA**

The current position of a hostile witness in India is extremely circumstantial and it depends upon the facts and circumstances of each case. No law or statute defines or provides for any rule on this behalf. Although the courts have time and again somewhat cleared this position, there is a small amount of ambiguity present in the opinions of the various courts as well.

The evidence of a hostile witness cannot be outrightly rejected and it can be taken into consideration by the court as long as it is in favour of the prosecution or the defence. If a witness during cross-examination accepts to have made the previous statement and also accepts that such a statement is true, then such a statement is evidence of both the previous statement and the fact that the previous statement is true according to the witness. But the conviction of the accused can't be founded on the previous statement of the

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<sup>2</sup>The Indian Evidence Act, 1872, § 154, No. 1, Acts of Parliament, 1872 (India).

<sup>3</sup>*Sat Pal v. Delhi Administration & Others*, AIR 1976 SC 294.

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witness even if the witness accepts to have made such a statement along with admitting that the statement was true as was held by the Gauhati High Court in the case of *Hanu Baistav v. The State of Assam*<sup>4</sup>.

It is a well-settled principle in law that the evidence of a hostile witness cannot be rejected wholly just because the witness turned hostile and refused to testify in the interests of the party who called him but that portion of the evidence given by a hostile witness is relevant and can be taken into account if it is in harmony with the case of either the prosecution or the defence as was held by the Apex Court in *The State of Uttar Pradesh v. Ramesh Prasad Misra*<sup>5</sup> and *C. Muniappan v. The State of Tamil Nadu*<sup>6</sup>.

It is also a well-settled principle in law that the evidence of a prosecution witness cannot be rejected completely just because the prosecution chose to treat the witness as hostile and cross-examined him. The evidence of such a witness cannot be completely rejected and can be accepted to the extent it is credible and reliable which will also be subjected to proper scrutiny. If the judge comes to a finding that the credit of the witness did not shake completely then he can allow for the same to be taken into consideration but with due caution and proper scrutiny.

The Supreme Court of India in the case of *Hari & Another v. The State of Uttar Pradesh*<sup>7</sup> held that if a witness is a natural, independent and credible witness and does not have any reason and intention to falsely implicate and wrong an accused person then the testimony of such a witness can be relied upon and conviction can be granted on the testimony of such a witness in a criminal trial.

### **WHEN DOES A WITNESS BECOME HOSTILE?**

Today the primary driver for the high vindication rate in our law enforcement framework is the observer turning threatening. One of the primary reasons behind the huge number of absolutions in criminal cases is the witnesses turning antagonistic and giving bogus declarations in criminal cases.

There are various purposes behind an observer turning threatening, the significant one being the lack of police security during and after the trial. The witness fears confronting the fury of the convicts who might be well-connected.

It is a common thing these days that the perpetrators either bribe the witnesses or coerce them by threatening them or the loved ones of their life. The wrongdoers also kidnap the people of the witnesses to coerce them.

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<sup>4</sup>Hanu Baistav v. The State of Assam, 2012 SCC OnLine Gau 352.

<sup>5</sup>The State of Uttar Pradesh v. Ramesh Prasad Misra, (1996) 10 SCC 360.

<sup>6</sup>C. Muniappan v. The State of Tamil Nadu, (2010) 9 SCC 567.

<sup>7</sup>Hari & Anr v. The State of Uttar Pradesh, 2021 SCC OnLine SC 1131.

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Another explanation is the extreme deferment in the disposal of the cases. The prolonged trials increase the observers' difficulty. They are required to come to the court as and when they are summoned, and this becomes quite tiring and exhausting after a period of time. Their problem gets all the more aggravated when the court is quite far from their place or in another city or state and they are required to go. Therefore, they try to get free as soon as possible.

Terrorizing is likewise one of the primary reasons for the witnesses turning unfriendly. Many a time, the witnesses fear that the culprits might harm them and their loved ones so in order to protect themselves and their people, they turn hostile. The perceptions of the Delhi High Court that the observer in an enormous number of cases were turning unfriendly because of "terrorizing and danger" should be noted. It is affirmatively conceded that in immensely significant cases observers were under consistent danger from the lawbreakers. There is an urgent need to do whatever it may take to stop the provocation of the observer, with the goal that he doesn't feel disappointed. There is additionally a pressing need to give sufficient insurance to the observer from terrorizing by the hooligans, the perception said. It was observed by Justice Wadhwa, "Here are the observers who are a bothered lot. An observer isn't treated with respect in the Court. He is pushed out from the jam-packed court by the peon. He hangs tight for the entire day and afterwards, views as the matters get concluded.

He has no place to sit, no place even to have a glass of water and hygienic food and sanitation facilities. Furthermore, when he shows up in the Court, he is exposed to delayed and unrestrained assessment and questioning and thereby, ends up in a hapless situation.

For this multitude of reasons and others, an individual despises turning into an observer.

Research studies state that the observers definitely imply that tiring interrogation, successive intermissions, and court scares are a portion of the significant reasons that force an observer to turn to threats. As represented by Zahira Sheikh's flip-flops in the *Best Bakery*<sup>8</sup> case, the danger of counter, which could incorporate actual brutality, is a significant reason why the witnesses (some of their casualties) don't collaborate. That case started off as a cross-country banter on the requirement for observers to be safeguarded by the state. In any case, it isn't terrorizing alone that makes the observers turn antagonistic.

The decision in Jessica's situation and a progression of related episodes in the past infer Karl Marx's words:

*"History rehashes the same thing first as misfortune and afterwards as sham."*

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<sup>8</sup>Zahira Habibullah H. Sheikh and Anr. v. State of Gujarat and Ors., (2004) 4 SCC 158.

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In exciting cases like the *BMW*<sup>9</sup> and *Jessica Lal murder case*<sup>10</sup> and as of late, the *Best Bakery* case, where the witnesses turned unfriendly, there is a minimal possibility of getting a conviction.

### WHAT HAPPENS WHEN A WITNESS BECOMES HOSTILE?

Whenever a witness becomes hostile, the witness brings a plethora of consequences with himself or herself, the majority of which are negative consequences. Those consequences are not as distinct as they appear and overlap with each other. These are discussed as follows:

- **Acquittal of the accused:** The first and foremost thing which happens as a result of a witness turning hostile is the acquittal of the accused. Due to witnesses turning hostile, there can be a lack of proper evidence against the accused thereby allowing him or her to walk away freely. In the *Jessica Lal Murder* case, the Sessions Court had acquitted all nine accused on the grounds of insufficient evidence and the key witnesses turning hostile and the main culprit Manu Sharma along with other accused persons got free.
- **Weakening of the case:** Another important consequence is the weakening of the case. Both the prosecution's and the defence's cases can become weak owing to a lack of proper and reliable witnesses. In the *Phoolan Devi Murder* case, a key eye-witness turned hostile by claiming that his earlier statements against the prime accused were given under police pressure thereby, prolonging the trial.
- **Injustice:** It is a major cause of injustice today as people are able to walk away freely after committing offences and in some cases where a person falsely accused of an offence or who committed an offence in defence is not able to prove his or her innocence, gets convicted. In the *Jessica Lal Murder* case, the Sessions Court had acquitted all the nine accused on the grounds of insufficient evidence and the key witnesses turning hostile because of a probable influence of the culprit Manu Sharma who hails from a high-profile family.
- **Delay in justice:** This also gives rise to prolonged trials and thereby causing a delay in the delivery of justice. It is very rightly said in the law, "*Justice delayed is Justice denied*" which means that a delay in justice is quite equivalent to no justice at all.

<sup>9</sup>State Tr.P.S. Lodhi Colony, New Delhi v. Sanjeev Nanda, (2012) 8 SCC 450.

<sup>10</sup>Siddhartha Vashisht @ Manu Sharma v. The State of NCT of Delhi, (2010) 6 SCC 1.

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- **Loss of faith:** As a result of culprits getting acquitted, innocent people getting convicted, prolonged trials and delays in getting justice, other people tend to lose their faith in the justice system and as a result, remain quiet many times thinking that they will not get justice, so it is better to keep quiet. Mr Soli Sorabjee has appropriately said that nothing shakes public trust in the law enforcement conveyance framework all the more than the breakdown of the arrangement attributable to the witnesses turning unfriendly and withdrawing from their past assertions. The observer is generally scared of remaining in the court and giving any such explanation that could be effectively countered by the other counsel.

## WHAT TO DO WHEN A WITNESS BECOMES HOSTILE?

The hostility of witnesses in serious crimes and crimes committed by "high profile" persons has challenged the system of criminal justice. Since this menace is on an all-time rise these days, it has become all the more important to curb the same in order to prevent the failure of the machinery of justice. Although there are no laws regarding it, the courts have time and again come up with various measures and strategies. Apart from having statutory provisions, it is imperative to have proper implementation machinery so that the laws are able to get properly implemented. Therefore, the authors of this research paper suggest the following steps:

- **Security of witnesses:** One of the key reasons behind the witnesses turning hostile is the fear of potential harm by the culprits or an attempt already done by them. Therefore, it is quite essential for the courts, police, and the concerned stakeholders to provide the witnesses and their families with adequate protection starting from the initial stage of the case and it should be continued even after the case ends because in some cases, the culprits are extremely high-profile and powerful and in the event of their conviction, their contacts could possibly harm the witnesses and their families. In the Unnao rape case for instance, while the victim, two witnesses and the victim's lawyer were on their way, a suspicious truck came and hit their car and as a result, the two witnesses died while the victim and her lawyer were critically injured.
- **Abolishment of witnesses' inducement:** Many times, the witnesses are bribed to either withdraw from their earlier statements in the court or are asked to take the blame of someone else. People out of greed or in genuine need of money accept the offer thinking that they won't be able to even earn such a huge amount of money in the time period which might be given to them as punishment. So,

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such kind of inducement should be eliminated completely and the people accepting the bribe should be duly punished.

- **Speedy trials:** It is not a fact hidden from people that owing to a huge population, trials take longer than usual time to finish. Section 309<sup>11</sup> of The Code of Criminal Procedure 1973 was enacted to ensure speedy trials but the same is not being followed. This causes difficulties and stresses not just for the parties but also for the witnesses. So, the lawmakers should ensure to wind up the cases as soon as possible by ensuring the presence and availability of the requisite amount of personnel and resources.
- **Respect towards witnesses:** The witnesses should be treated with respect in the Court. They should not be pushed out from the jam-packed court but escorted properly by the authorities. They should not wait for an entire day to witness the matters getting concluded. They should be provided with a place to sit, hygienic water, food, and adequate sanitation facilities. Furthermore, when they show up in Court, they should not be exposed to delayed and unrestrained assessment and questioning. The witnesses should also be provided with adequate facilities and allowances for commutation to the court. The authorities should strive to improve these basic facilities and structures.
- **Signed statements:** The authorities should add an exception to Section 162<sup>12</sup> of Cr.P.C that in heinous cases where the perpetrators are quite high-profile or where there are chances of a possible influence of the culprits on the victim or the witnesses then the police can get the statements signed by the person who gave it, but it should not be mandatory.
- **Adequate laws:** “*Where there is a will, there is a way.*” The Parliament should come up with some better laws in order to provide stringent security to the witnesses, punishment to the violators, speedy trial of cases, etc. It is also very important to amend the existing laws and make them more stringent. As much as it is important to punish the perpetrators for inducing or causing any harm to the witnesses or their families, it is equally important to punish the witnesses who turn hostile out of greed or malice. The authors strongly support the abolishment of obsolete laws.

### THE BOTTOM LINE

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<sup>11</sup>The Code of Criminal Procedure, 1973, § 309, No. 2, Acts of Parliament, 1973 (India).

<sup>12</sup>The Code of Criminal Procedure, 1973, § 162, No. 2, Acts of Parliament, 1973 (India).

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The importance of the witnesses can't be dispensed with in any proceeding or trial. They can change the whole scenario of a case. They can make or break any case as has been observed in a plethora of cases. In light of this importance, it becomes all the more important to treat them with the utmost respect and to provide them with appropriate protection as and when they require it. The witnesses have a moral duty as well to speak the truth when they appear before a court for testifying. They should not be swayed by any kind of greed or inducement keeping in mind the importance of justice and the consequences of its deferment or denial. All of this is a two-way process and the witnesses and the lawmakers should join forces in order to ensure a smooth delivery of justice. It is also quite important for the Parliament of India to come up with some stringent laws so that the witnesses do not turn hostile and even if they did, they get stringent punishment. Also, all the people who try to manipulate or harm the witnesses or their loved ones should be punished so that the witnesses do not turn hostile because of their influence. As it is very rightly said, "*Prevention is better than cure*" it is important to have proper preventive measures because it will be really very difficult to "cure" the problem because when the time comes to "cure" the problem it takes such a bad shape that in many cases it is not practically possible and feasible to "cure" it.

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