



## EFFECT OF HOSTILE WITNESSES ON THE ADMINISTRATION OF CRIMINAL JUSTICE SYSTEM IN INDIA: A CRITICAL ANALYSIS

---

Zibran Khan \*

### ABSTRACT

*Witnesses play a crucial role in the criminal justice system, providing testimony and evidence that greatly influence the pursuit of truth and the delivery of justice. However, witnesses face numerous challenges that hinder their participation and cooperation, ultimately impacting the outcome of trials. Witnesses are often subject to threats and intimidation, deterring them from coming forward and sharing vital information due to concerns for their safety and that of their families. The lack of witness protection programs exacerbates this problem, leaving witnesses vulnerable. Additionally, witnesses encounter challenges within the judicial process itself, such as the time-consuming nature of court hearings, cross-examinations, and repeated adjournments, leading to financial hardship and frustration. Hostility and witness tampering pose further obstacles. Witnesses may face coercion, bribes, or fear reprisals, compromising the integrity of their testimony. Furthermore, witnesses often feel mistreated within the court system, experiencing a lack of respect, dignity, and attention. These negative experiences can discourage their active participation and erode confidence in the fairness of the system. Witnesses may also suffer psychological and emotional impacts, reliving traumatic events and experiencing anxiety, fear, and PTSD, which can affect their ability to recall and communicate crucial details accurately. To address these challenges, it is crucial to ensure witnesses are treated with fairness, respect, and dignity throughout the criminal justice process. Implementing comprehensive witness protection programs, providing financial support, and offering counselling services can alleviate barriers witnesses face. Measures to prevent witness tampering, training for legal professionals, and creating a supportive environment are also essential. In conclusion, the witnesses' role in the criminal justice system is paramount, but they encounter significant challenges. Recognizing their importance and implementing solutions to protect and support witnesses is vital for a fair and effective criminal justice system. By doing so, we can ensure that witnesses can confidently and safely contribute to the pursuit of justice.*

**Keywords:** Hostile Witness, the criminal justice system, threats, intimidation.

---

\*BA LLB, FOURTH YEAR, NIMS UNIVERSITY JAIPUR, RAJASTHAN.

## **INTRODUCTION**

In countless instances, the witness's evidence has been disregarded by the courts due to their hostile behaviour. This is true in both the criminal justice system of India and other nations. Uncooperative witnesses pose a serious obstacle to the achievement of justice's goals. The role of witnesses in the criminal justice system is of utmost importance as they provide crucial testimony and evidence that can significantly impact the pursuit of truth and the delivery of justice. Witnesses are often referred to as the "eyes and ears of justice" and play a pivotal role in the adversarial system, where the burden of proving a case lies on the prosecution. Their statements, whether direct or circumstantial, form the foundation of a criminal case, and their credibility and reliability are vital for establishing guilt or innocence. Witness testimonies can lead to the conviction or acquittal of the accused, making the presence of witnesses a critical factor in determining the outcome of a trial.

### **SIGNIFICANCE OF WITNESS TESTIMONY:**

The testimony provided by the witness allows the court to evaluate the facts and circumstances of a case. Witnesses are required to take an oath or solemnly affirm to speak the truth, and their statements serve as a vital source of information for the court and the jury. Their observations, experiences, and knowledge can shed light on the events leading up to a crime, the actions of the accused, and the impact on victims and society. Witness testimony helps establish a timeline, identify perpetrators, corroborate or refute evidence, and provide critical details that may not be obtainable through other means.

### **CHALLENGES FACED BY WITNESSES**

One of the significant challenges faced by witnesses is threats and intimidation. Witnesses often encounter pressure and harassment from the accused party and their associates. This can act as a significant deterrent for witnesses to come forward and offer their testimony. The fear for their safety and the safety of their families can prevent witnesses from cooperating with law enforcement and participating in the legal process. Additionally, the lack of witness protection programs in many jurisdictions exacerbates this problem, leaving witnesses vulnerable and reluctant to share vital information.

Judicial Process Witnesses encounter various challenges within the judicial process that can hinder their participation and cooperation. Attending court hearings, undergoing cross.

Examination, and dealing with repeated adjournments can be frustrating and time-consuming. Witnesses may need to take time off from work, resulting in financial hardship and potential career setbacks. The complexities and delays in the judicial process can lead to a loss of faith and satisfaction among witnesses, discouraging their willingness to engage with the system.

**Hostility and Turning Hostile:** Witnesses may face hostility and pressure from various quarters, leading them to change their testimony or withhold crucial information. This phenomenon, known as turning hostile, poses significant challenges to justice delivery and a fair trial. Witness tampering, bribes, and other forms of coercion can compromise the integrity of witness testimony and undermine the pursuit of truth. In some cases, witnesses may fear reprisals or have personal motivations that compel them to alter their statements, making it difficult for the court to ascertain the veracity of their testimony.

**Witness Treatment and Perception:** Witnesses often feel that they are not treated with respect and dignity within the court system. They may experience a lack of courtesy, human treatment, and attention from the police, prosecution, and judiciary. This mistreatment can lead to witnesses feeling marginalized, ignored, or intimidated throughout the criminal justice process. Such negative experiences can discourage witnesses from actively participating in legal proceedings and may result in a lack of confidence in the fairness of the system.

**Psychological and Emotional Impact:** Witnessing or being involved in a crime can have severe psychological and emotional consequences for individuals. The trauma and stress associated with testifying in court, reliving traumatic events, and facing aggressive cross-examination can further exacerbate these effects. Witnesses may experience anxiety, fear, and post-traumatic stress disorder (PTSD), affecting their ability to recall and communicate crucial details accurately.

Due to the adversarial nature of Indian law and reliance on witnesses, the Court faces difficulties concluding a case when a key witness turns out to be hostile. Therefore, hostile witness behaviour delays proceedings and prevents a just and equitable conclusion from being reached.

When Anil Ambani, the chairman of Reliance Communications, was called as a witness in the 2G spectrum case and questioned about the accuracy of the statement he made under Section 180 of BNSS it was one of those instances where the witness became hostile. By claiming that he can't recall what he said two years ago, he contradicts his earlier assertion. He resisted

answering any of the questions during the prosecution's cross-examination about the Board meetings, etc. and instead claimed amnesia. The Court must, thus, pronounce him hostile. However, despite being a key witness in the 2G spectrum dispute. Anil Ambani did not suffer any legal consequences for his activities. This essay covers a wide range of topics, including what makes a witness hostile, how hostile witnesses affect trials, rules of Indian law, solutions to the problem of a hostile witness, and global perspectives on the issue.

One should understand the main purpose of this study. This study takes four perspectives to discuss witness issues and problems: the problem perspective, the hostility perspective, the protection perspective, and the help perspective. In witness, court, and procedural matters, the focus was mostly limited to the level of protection and handling of hostile witnesses. In addition, issues of protection and hostility are addressed in this study, which has been tasked with investigating the problem and the complaints they frequently face witnesses during his interactions with the police, prosecutors, and court officials.

The perspective of the problem I Volume. Obstacles and burdens to be faced by witnesses in dealing with law enforcement are occasionally discussed in some important decisions. This section aims to present the problems of witnesses in the light of case law answers and individual searches in this area. The Malimath Committee has been following this case with great concern and reads: "Unfortunately, Father treats the Witnesses very badly. The system. There are no opportunities for witnesses to appear in court and have to wait a long time, often their interrogation is unreasonable and sometimes rude. They don't get their TA/DA immediately. Witnesses are not treated with courtesy and caution; they are not protected either. Witnesses must appear on-site unsuccessful and repeated as many cases are referred and postponed for trivial reasons. To overcome these problems, The Committee made the following recommendations:

1. The witness who comes to the court's aid must be treated with dignity and show courtesy. An official must be appointed for the donation to help him.
2. A separate location with adequate facilities should be provided. e.g... Places, rest, toilets, drinking water, etc., for the convenience of witnesses at the courthouse.
3. Travel expenses and other subsistence costs of the witness must be calculated and tried to compensate him for the costs incurred.

Reasonable arrangements must be made for the payment of compensation due to a witness on the same postponement date without questioning the witness, T.A. gets paid from above on the same day. Witness experiences are avoidable complaints, no kindness, human treatment, expression of concern, caring, and Recognition and Extension of Landmarks. Many cases studied in this project indicate that the witness was treated as a defendant on multiple occasions. The whole affair of witness hostility causing a stir also seems to refer to the treatment of the witness as being administered as part of a criminal proceeding.

Agreement is necessary to obtain witness participation in witness questioning. The judgment of the Supreme Court has become final, and witnesses have experienced harassment and a lack of compassion in their interactions with the police, public prosecutors, and the judiciary. Unfortunately, the duration of the probationary period was not specified, so it is difficult to provide further comment on it; however, regardless of the period, the situation has not improved since then. Many victims and witnesses do not receive sufficient information and support they need in a criminal proceeding. The neglect of their needs often results in a lack of prosecution support, absenteeism, and dissatisfaction with the proceedings. This can lead to lost cases and witnesses being reluctant to participate in future criminal hearings.

The criminal justice system has a responsibility to care for victims and witnesses, ensuring they feel safe and able to testify. Testifying in court can be an intimidating experience for anyone. Victims and witnesses have the right to expect a smooth and coordinated service from law enforcement. A study conducted abroad revealed that only 19 percent of witnesses felt they had been adequately briefed on the progress of their case. Additionally, 28 percent of victims desired help, but only 13 percent received support. Furthermore, 21 percent of witnesses felt intimidated by the process of giving testimony or by the judicial environment. Former Attorney General K.T.S. Tulsi stated, "Honest witnesses have left criminal courts because police and courts often treat them as defendants. Police routinely twist testimonies and cross-examine them."

This study conducted an empirical assessment of the problems faced by witnesses in four states across the country. Subsequent sections of the study will focus on the comprehensive range of issues and challenges faced by witnesses during their interactions with law enforcement agencies. Witness protection is another aspect addressed in this study. The question of protection becomes critical in the face of intimidation, seduction, and the pressure typically exerted on witnesses whose safety is at risk. The judiciary has emphasized the need for

legislation guaranteeing witness protection in numerous judgments. The Law Commission has also recently addressed this issue and proposed legislation.

Witness hostility has become a serious problem. The turnaround in many high-profile cases in recent times has brought this issue to the forefront. Existing perjury laws appear to be quite restrictive and are rarely invoked. Finally, the present study proposes an approach to witness assistance that emphasizes providing full support to witnesses at all stages of the criminal justice process. It also advocates for the recognition of specific rights for witnesses.

## **EVOLUTION OF THE CONCEPT OF HOSTILE WITNESS**

Witnesses have played a significant role in the pursuit of justice throughout history. The principles of justice require that truth and impartiality be central to the legal system. Witnesses, as bystanders or third parties, have been crucial in confirming or informing the criminal justice system about the facts surrounding an incident. The statements made by witnesses are considered accurate and factual due to the presumption that they are made under oath. As a result, the role of witnesses has been paramount in contributing to justice.

The practice of calling witnesses to testify in legal cases is not a new concept and has been present since ancient times. Even in ancient India, witnesses were called upon to provide testimony. Kautilya, in his famous work *Arthashastra*, mentions that "the parties themselves will present witnesses who are not far removed by either time or location. Witnesses who are far away or not produced by order of the judge." Various forms of evidence were categorized as human or divine, with human evidence including documents, property, and witnesses. The well-known work by Yajñvalkyā lists three modes of evidence, including the comparison of handwriting. To understand the role of witnesses in the criminal justice system, it is important to trace the history of the law of evidence in the country across three different periods: the ancient Hindu period, the early Muslim period, and the British era.

## **THE ANCIENT HINDU PERIOD**

During the ancient Hindu period, the laws of evidence can be traced back to the Hindu Dharma Shastras. The historical background of the law of evidence and its development were discussed in detail in Radha Kumod Mukherjee's *Endowment Lectures on the Hindu Judicial System*, delivered by Sir S. Vardhachariar. According to the Hindu Dharma-Sastras, the purpose of any trial was to seek the truth. Yajñvalkyā states, "Rejecting what is deceitful, the king must make

judgments that correspond to the facts." To discover the truth when conflicting claims were made by two parties, Hindu legislators took various precautions. The Shastras stated that the parties appearing before the court must be satisfied that they adhere to the truth. Manu, another ancient Hindu jurist, mentioned that the presiding king must verify the truth and establish the accuracy of witness statements, including the description, time, and place of the transaction or incident. The king had to consider the cause and customs of the country and speak the truth.

Vasista, another ancient Hindu jurist, recognized three types of evidence: Likhitam (document), Sakshi (witnesses), and Bhukhti (possession). Documents (Lekhya) were given importance in the ancient Hindu legal system, and they were further categorized into Rajasaksika, Saksika, and Asaksika. Witness testimony (Sakshi) was also considered a crucial form of evidence. The competence of witnesses was determined based on their character and credibility. Rituals were performed by witnesses before testifying to establish their truthfulness. Possession (Bhukhti) was recognized as proof of ownership, alongside documents and witnesses.

Studying the historical context of witnesses in the legal system provides valuable insights into the development of evidence laws and the significance of witness testimony in the pursuit of justice.

In the ancient Hindu period, documentary evidence, known as Lekhya, played a significant role in the legal system. It was further categorized into three types: Rajasaksika, Saksika, and Asaksika.

1. **Rajasaksika:** Rajasaksika documents were established at the royal court and notarized by the presiding officer using a seal, similar to modern registered documents.
2. **Saksika:** Saksika documents were purely private and could be written by anyone, with the requirement of being signed by witnesses.
3. **Asaksika:** Asaksika documents were written by the parties themselves and were considered permissible. The ancient Hindu law of evidence favoured documentary evidence over oral testimony, as legislators were aware of the potential weaknesses and counterfeiting possibilities of documents. To ensure the authenticity of the documents. Certain standards were established. For instance, documents written by children, relatives, insane people, women, or people in fear were considered faulty. Additionally, rules were established to

prove the authenticity of a document, such as handwriting comparison, especially in cases where the original authors were deceased.

Witnesses, known as Sakshi, also held importance in the ancient Hindu legal system. Hindu legislators set rules for determining the competence of witnesses. Individuals with questionable character were considered contaminated and non-competent as witnesses. Shastrakartas, similar to today's lawyers, were ordained priests responsible for ensuring that witnesses told the truth. Before testifying, witnesses were required to perform a short sankalpa (ablution), look in an auspicious direction, and were admonished to tell the truth with their strongest religious sentiments. Establishing the credibility of witnesses was crucial, and judges paid close attention to their behaviour.

According to Vishnu Purana, a false witness could be recognized by changes in appearance, such as a change in facial colour or off-topic speech. Yagnavalkya stated that a witness who displayed certain physical and verbal behaviours, such as licking their lips, perspiring on the forehead, stumbling over words, speaking incoherently, not paying attention, biting their lip, or displaying spiritual or bodily actions, would be considered contaminated. In addition to documents and witnesses, possession (Bhukhti) of real estate played a significant role in resolving disputes over ownership in the ancient Hindu legal system. Possession was recognized as proof of title and ownership, alongside documents and witness testimony. The present-day legal system also includes a presumption that the owner of something is its rightful owner. Overall, the ancient Hindu legal system placed importance on documentary evidence, witness testimony, and possession as crucial elements in resolving legal disputes and establishing justice.

### **THE EARLY MUSLIM PERIOD**

During the ancient Muslim period in India, the law of evidence had its historical background outlined in the book "Muslim Jurisprudence" by Sir Abdul Rahim. Islam places great emphasis on justice, considering it a divine provision. The Holy Qur'an emphasizes the importance of justice, stating that it is the basis of all creation, and one of the attributes of God is righteousness. Muslim legislators classified evidence into two categories: oral testimony and documentary testimony. Oral proofs were further divided into direct evidence and hearsay, similar to the classification used in contemporary legal systems. While duly executed documents and books were accepted as evidence in business transactions, oral testimony seems



to have been given preference over documentary evidence. Regarding oral testimony, the Holy Qur'an advises believers to act justly when appearing as witnesses and warns against letting personal biases or hatred influence their testimony. The emphasis is on upholding justice and righteousness. The Qur'an also emphasizes the importance of truthfulness in bearing witness, regardless of the social status or wealth of the parties involved.

In the ancient Muslim period, courts paid great attention to the hearing of witnesses. The credibility of witnesses and parties held significant importance. An example illustrating the importance of witness credibility can be seen during the time of Mughal Emperor Shahjahan. In a case where a Hindu writer complained that a Mughal soldier had eloped with his wife, the king commanded the arrest of the soldier and the appearance of both parties before him. The woman claimed not to be the wife of the Hindu writer. Emperor Shahjahan then observed the behaviour of the woman and asked her to fill the court's inkwell. The woman executed the task skillfully and competently, leading the king to believe that she must be the Hindu writer's wife. In summary, the ancient Muslim period in India recognized the importance of both oral and documentary evidence. Courts focused on the credibility of witnesses and parties, and the administration of justice was considered a divine provision by Islamic principles.

In ancient Muslim courts, documentary evidence was also recognized. However, certain documents were not accepted as evidence. According to ancient Muslim law, documents executed by specific groups of people were considered defective and inadmissible as evidence. Individuals such as women, children, drunkards, gamblers, and criminals were deemed incapable of executing valid documents. Therefore, any documents created by such individuals were not accepted as evidence in ancient Muslim courts.

### **THE BRITISH ERA**

During British India, courts in Bombay, Madras, and Calcutta followed the English rules of the Evidence Act. However, in Mofussil Courts (outside the presidency towns), there were no defined rules regarding the law of evidence. These courts had unrestricted freedom in the process of accepting evidence. In modern times, the term "witness" is not explicitly defined in Indian law. However, the legal understanding of the term is clear. A witness can be defined as an individual who testifies in a case, being impartial and sworn to tell the truth, the whole truth, and nothing but the truth. Black's Law Dictionary defines a witness as someone who sees,

knows, or testifies to something, whether through oral or written statements, under oath, or by affidavit.

The Supreme Court of India, in the case of *Sat Pal v Delhi Administration*, defined a witness as someone who is unwilling to tell the truth at the behest of the court. An unfavourable witness is one called upon by a party to prove a certain fact but fails to do so or proves a contrary fact.

**According to the Halsbury Laws of India, witnesses can be classified into various categories, including:**

1. Eyewitnesses: Those who have directly seen the events or incidents in question.
2. Natural witnesses: Individuals who, by their position or proximity to the events, know the facts.
3. Occasional witnesses: People who happen to be present at the scene of the incident and can provide relevant information.
4. Official witnesses: Witnesses who hold an official position and can provide testimony based on their professional knowledge or expertise.
5. Unique witnesses: Individuals who possess special knowledge or information that is crucial to the case.
6. Witnesses injured: Those who have suffered harm or injury as a result of the incident and can testify about it.
7. Independent witnesses: Neutral individuals who have no personal interest in the outcome of the case and can provide unbiased testimony.
8. Interested witnesses, relatives, and partisans: Witnesses who have a personal interest in the case or are related to the parties involved.
9. Enemy witnesses. This term, although not included in the Indian Evidence Act, refers to witnesses who may have a hostile attitude towards the party calling them.
10. Trap witnesses: Witnesses who have been specifically set up to test the truthfulness of a suspect or accused person.
11. Rustic witnesses: Witnesses from rural areas who may have a different perspective or understanding of the events.
12. Child witnesses: Children who provide testimony in cases where they have witnessed or experienced relevant events.
13. Approver and accomplice: Witnesses who may be involved in the crime but agree to provide evidence against others involved.

The term "hostile witness" does not find a place in the Indian Evidence Act 1872. The exact meaning of the words "opposing," "Reluctant," or "hostile" is subject to interpretation, and the courts have discretion in determining whether a witness is considered unfavourable. An unfavorable witness is not limited to someone whose statement contradicts their previous statements or evidence, but can also refer to someone who displays hostility towards the party calling them.

### **WHO IS AN "ENEMY WITNESS"?**

Generally, a witness is considered hostile if they provide a statement about their knowledge of certain crimes to the police but contradict that statement when summoned to testify in court during legal proceedings. The term "enemy witness" does not have any explicit or implicit mention in Indian law, including the Indian Evidence Act or the Penal Code. Historically, the term "Enemy Witness" originated in common law, which classified witnesses as "enemy" or "hostile" witnesses. However, this distinction has not been implemented in any existing laws in India.

### **DEFINITION**

According to the Encyclopedia, an enemy witness is defined as a witness in a trial who testifies against the party that called them or provides negative testimony during direct examination. The Law.com dictionary defines a hostile witness as an unfavorable witness in a trial whom the judge deems as hostile or contrary to the position of the party whose attorney is contesting the lawsuit.

When a client's or witness's behaviour becomes openly hostile, the attorney may ask the judge to declare the witness as hostile or adverse. If the judge makes such a declaration, the lawyer can then ask "leading questions" that suggest answers or challenge the testimony, similar to cross-examining a witness called by the opposing party. A hostile witness is an opposing witness in a trial who is declared hostile by the judge due to their opposition to the party whose attorney called them as a witness. Even if the attorney called the witness to testify on behalf of their client if the witness's answers contradict the legal position, the attorney may request the judge to declare the witness as "hostile" or "adverse." Once the judge deems the witness as hostile, the attorney can ask leading questions that propose answers or challenge the testimony. Including cross-examining a witness who testified for the opposition. An enemy witness refers to a witness testifying for the opposing party or providing negative testimony while being

questioned directly by the party who called them. Therefore, a hostile witness is also referred to as an enemy witness as it weakens the case of the side that the attorney should support. In such situations, it is the attorney who requests the judge to declare the witness as an enemy witness.

Therefore, it is the court's judgment and no other authority that is empowered to declare a witness as an enemy witness. It should be noted that the court itself cannot declare a witness as an enemy witness but can only do so upon the request of the party calling the witness. Once a witness is declared as an enemy witness, the prosecuting attorney has greater freedom to challenge the witness. In other words, when a witness is declared as an enemy witness, the prosecution can cross-examine the witness and ask leading questions. This creates a fundamental difference between a witness declared hostile and a witness who has not been declared hostile or is considered an ordinary or favourable witness. In the case of *Gura Singh v. State of Rajasthan*, the Supreme Court attempted to define an enemy witness and concluded that under common law, an enemy witness is described as someone unwilling to tell the truth on behalf of the calling party, whereas an unfavourable witness is invoked by a party to establish a specific fact that is in dispute or relevant to the matter, which the witness either fails to prove or proves to the contrary.

While the term "enemy witness" may not be directly used in Indian laws, a reflection of it can be seen in the *Bharatiya Sakshya Adhinyam, 2023*, particularly in the importance of cross-examination. The Indian Evidence Act grants the right to cross-examine a witness, and Sections 146 (2) and (3) specify that leading questions should not be asked during the examination-in-chief except as authorized by the court. However, the court may allow leading questions on matters that are introductory or undisputed or have already been sufficiently proven, in its opinion.

### **HOSTILE WITNESS AND ITS IMPORTANCE IN A CRIMINAL CASE**

In any nation's criminal justice system, a witness is given priority. Bentham, a legal theorist, once said that "witnesses are the eyes and ears of justice." Any type of evidence, direct or circumstantial, must be available in a criminal prosecution and must be corroborated by witnesses who have sincerely sworn to tell the truth. The prosecution has the opportunity to present his case at the start of the trial by calling witnesses in favour of the evidence he has presented to vouch for its validity. The witness is put through a set of legal questions that are

further supported by the other pieces of evidence available to ascertain the facts. When a witness is summoned by one side to attest the facts in that party's favour, the witness is referred to as hostile if he or she either acts against the party summoning the witness or keeps mute. This circumstance occurs, in particular, when the witnesses decline to corroborate their previous account of the events, which weakens the prosecution's case and prevents the court from reaching the shores of justice and a fair trial.

This phrase has its roots in the Common law system and was created to offer sufficient protection from witnesses tarnishing the case of the party calling. This behaviour is viewed as per se detrimental not only because it undermines the prosecution's meticulously built arguments but also because it eats up court time and denigrates the investigation process. It should be stated right now that a witness cannot be labelled hostile just because his testimony is favourable to the other side. It must be adequately demonstrated by presenting evidence that is sufficient to show that the witness is either trying to hide the truth from the court or does not want to disclose the truth. In *State Tr. P.S. Lodhi Colony v. Sanjeev Nanda*, the Supreme Court of India noted an increasing tendency of witnesses to turn hostile, particularly in high-profile cases, either due to financial inducements or life threats, undermining people's trust in their ability to seek justice. According to Section 154 of The Evidence Act, there are two factors for judging a witness's level of animosity, and they are as follows:

1. Is there any suspicion that a statement is untrue?
2. Is the witness required by law to tell the truth?

### **CONSEQUENCES OF WITNESS TURNING HOSTILE**

**Crime of Perjury:** Making false testimony in court, which the witness believes to be false, exposes him/her to the crime of perjury. The practice of false testimony involves attempting to cheat the judicial process when the person is legally bound by the oath sworn by him to tell the truth. Section 8 of the Indian Oath Act 1873 states that the court has legal authority to punish the witness for the crime of perjury. A version of the statement registered under the supervision of the magistrate.

If a witness in court deliberately tries to conceal the truth but accepts his false testimony under cross-examination, his admission of false testimony must not nevertheless result in his perjury offense being mitigated. The proper test to determine this is whether the witness himself corrected his error before it was exposed.

**Low Conviction Rates:** The effectiveness of the criminal justice system can be measured from conviction rates by analyzing the numerical number of cases prosecuted versus the number of convictions ordered in the reported cases. According to the 2018 National Crime Record Office report, the number of trials for the crime of murder under the Indian Penal Code totalled 16,867 and the total sentence handed down under that title was only 391. According to the most recent survey by the Civil Rights Enforcement Directorate, hostile witnesses account for a substantial 26% conviction rate 14 the reason for termination

**Testimonies become hostile and must not be dismissed:** In some cases, even if the witness is found to be hostile under Section 157 of the BSA, 2023 the witness is not entirely precluded from testifying. Once the witness becomes hostile, he is cross-examined by the procedures prescribed by law. To negate a negative statement. Testimony of the enemy witness by the calling party. However, the court has discretion to examine the authenticity of the testimony in the light of other corroborating evidence to determine whether or not it should be trusted.

**Loss of trust in the judiciary:** Due to the frequent harassment of witnesses, which led to the wrongful acquittal of the accused in serious crimes, there is a publicly imposed loss of trust in the judiciary 49 These incidents reinforce the notion among ordinary people that justice can only be achieved by influential people through the use of money and power.

## WITNESS PROTECTION

To ensure a free and fair process, sufficient security must be provided The Court of Appeals repeatedly reported per witness countries. Even if the dust doesn't seem to have settled on the case several interrelated legal and procedural issues require: Consent. The Supreme Court has stated in several sentences that art Witnesses should be treated with care and attention and kept safe is the responsibility of the state. But how these goals are achieved is still something to repair. The problem becomes crucial as there is no formal witness protection mechanism in India.

## LEGAL PROVISIONS IN WITNESS PROTECTION

Unlike many other countries, there is no specific legislation in India that provides witness protection only. However, there are some provisions of the Bharatiya Sakshya Adhiniyam, 2023. Sections 154 and 155 prohibit indecent, scandalous, abusive, and offensive questions to witnesses Apart from these regulations, there is no witness protection regulation in India. The

fact was recognized by the Supreme Court in *NHRC vs. State of Gujarat*, which stated: “No law has yet been made, not even a plan, to donate by the Union of India or the state government for witness protection.” The Supreme Court emphasized the need to protect witnesses, stating that the time has come for pure thoughts to be granted to protect witnesses so that the ultimate truth is presented before the court and justice triumphs without the verdict being reduced to a mockery. Legal safeguards and prohibitions on tampering with witnesses, victims, or informants become the imminent and inevitable need of the day.

Section 16 of the Terrorist and Disruptive Activities (Prevention) Act 1987 (TADA) and Section 30 of the Prevention of Terrorism Act 2002 (POTA) are not only in pair material but also literally. Provisions included in POTA and TADA were the first steps towards witness protection. Special courts set up under the respective laws were authorized to avoid mentioning the names and addresses of the witnesses in the judgments/sentences. Additionally, they were empowered to issue instructions for the maintenance of the identity and address of unknown witnesses. Any violation of these provisions is punishable under the respective laws. However, these provisions were found to be insufficient in providing effective protection for witnesses in sensitive cases.

## **CONCLUSION**

This part of the chapter offers some important conclusions based on our study, involving 798 witnesses in the four selected states 3.8 percent six or more than six times. Upper-middle-class witnesses appeared six or more times (2.6 percent), and 8.6 percent appeared only once. Witnesses below the poverty line also appeared in court more than once. For identifiable crimes, the majority of respondents only had to attend one hearing (44 out of 57 respondents), compared to identifiable crimes, where witnesses had to appear in court more than once. Witnesses had to appear in court more than once in cases such as fraud (73 percent), murder/attempted murder (47.4 percent), and rape (56.3 percent). Some witnesses had to appear more than six times (N73) and were mainly seen in cases of homicide/attempted homicide (15.3 percent). Examination of the nature of witness pressure in four states shows that respondents exposed to the power of money (31.7 percent) were mostly from Maharashtra (10 percent). The control subjects who experienced muscle strength (39.1 percent) were predominantly from Rajasthan (24 percent). The use of lobbying (3.8 percent) and peer pressure (4.6 percent) were also comparatively higher in the state of Rajasthan. The results of this study also suggest that compared to the controls from the general category, witnesses from

relatively disadvantaged backgrounds were more likely to be pressured to become witnesses. As can be seen, witnesses are often put under pressure in the course of their questioning testimony. The study concludes that the majority (69.8 percent) of the witnesses were pressured by their acquaintances, followed by social pressure (13.4 percent) and only 3.4 percent for money power.

Likewise, muscle power was also considered by these individuals in many cases (20.3 percent) against the general classes (19 percent). The study indicates that different types of pressure were used in the manufacture. Witnesses misrepresented their statements at the trial. As the data suggest, those surveyed were primarily confronted with money (31.6 percent) and muscles (39.3 percent), crucially, the power of money has been largely challenged (May 22).5 percent) for the disadvantaged classes compared to the general class (9.1 percent). It can be deduced from the study that the majority of witnesses involved were consenting witnesses in property crimes and pressured witnesses were mostly affected by violent crimes. Control subjects with a relatively low educational background had a higher chance of being put under physical pressure about their testimony. It also showed that these classes had been put under pressure largely through the power of money. It was assumed that the social position of the accused was of fundamental importance in provoking the hostility of the witness. The data suggest that 44.5 percent agreed and 14.2 percent of them belonged to Maharashtra, while almost as many belonged to Madhya Pradesh and Karnataka. Respondents in this study agreed (39.6 percent) or strongly agreed (15 percent) that assuming the accused had a criminal record, witnesses were more likely to react hostilely. Many Witnesses become hostile because they feel there is a liaison between police and suspects. Up to 41.3 percent of respondents agreed with this statement, and 22 percent agreed with this statement.

## REFERENCES

1. Indian Evidence Act 1872
2. Indian Penal Code 1860
3. Terrorist and Disruptive Activities (Prevention) Act 1987
4. Prevention of Terrorism Act 2002
5. Bharatiya Sakshya Adhinyam 2023
6. Hindu Law
7. Muslim Law
8. NCRB Reports



9. Malimath Committee
10. Supreme Court in NHRC vs. State of Gujarat
11. Sat Pal v Delhi Administration
12. Gura Singh v State of Rajasthan