

Relevancy of Hostile Witness in Administrative Justice

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ABSTRACT: *Because they aid in the administration of justice, witnesses are an important part of a well-functioning criminal justice system. In judicial proceedings, witnesses and their role in determining case outcomes are crucial. Hostile witnesses, on the other hand, have become a concern since they are the major source of high acquittal rates for offenders accused of terrible crimes such as murder, rape, and other crimes. When a favourable witness turns hostile, it creates a challenging situation that might have an impact on the case's result. After being threatened and pressured by the accused or his or her family members, they alter their views before or during the trial. This can lead to a miscarriage of justice or even justice's death. Society will lose trust in the judicial system if no efforts are taken to avoid hostile witnesses, culminating in anarchy. Because they are no longer afraid of the law, suspects can conduct crimes without fear of penalties due to the lack of witness protection regulations. The purpose of this article is to examine the role of the courts in safeguarding a hostile witness. It looks at the problem of hostile witnesses and how they affect the judicial system. It sought to understand why and under what conditions witnesses become hostile. The study also examines the concept of witness protection in light of key legislative laws and the judiciary's opinions on witness protection. For the purpose of doing research on the subject, the Doctrinal technique was used. The research was descriptive and explanatory, and it looked at the function of the judiciary in safeguarding hostile witnesses. For a clear view on the study paper, normative research was done in which many books, as well as many websites and articles, were consulted.*

KEYWORDS: *Hostile Witness, Criminal Justice System, Justice, Judiciary, Witness Protection.*

1. INTRODUCTION

Witnesses play a crucial part in the criminal justice system. According to Bentham, witnesses are the eyes and ears of Justice since whatever argument they make in front of a court of law assists the Court in delivering justice. The criminal justice system cannot function without the active and truthful attendance of witnesses in criminal trials. Despite this, no Indian legislation defines the term "witness," and neither the Code of Criminal Procedure, 1973, nor the Indian Evidence Act include it in any of its sections. A witness is someone who is present at an occurrence and can offer details about it, according to the dictionary definition. "A witness is someone who sees, knows, or swears to something, or offers testimony under oath or affirmation in person, by oral or written deposition," or by affidavit." Garner.

In judicial proceedings, witnesses and their role in determining case outcomes are crucial. When a favorable witness provides favorable testimony, it aids in the support of the side who invited the witness. The opposing party, on the other hand, can undermine the witness' evidence via cross-examination. In some situations, the witness's pivotal role might have devastating repercussions if the court is compelled to depend on other evidence instead of testimony. In addition, in some situations where the accused or injured parties are powerful citizens of a country, the trial may be impeded by psychological views about their position, which the court should reject and not allow to lead the case [1].

2. DISCUSSION

Definition and Interpretation

Witnesses have an essential role in aiding the court in the administration of justice, but when they turn hostile, there is a problem. Witnesses, on the other hand, are labeled "hostile" if they provide a statement to the police or any other body with the ability to record it, but subsequently refuse to testify in a court of law during a trial. No Indian laws, including the Indian Evidence Act, the Code of Criminal Procedure, or any other law, mentions the term "hostile witness." Unfavorable, unfavorable, or foreign is referred to as hostile.

These words are derived from the legal system of the United Kingdom. The term "hostile witness" was initially used in the Common Law to describe a "contrivance of an artful witness" who intentionally undermines the cause of the party calling such a witness by hostile evidence. Such actions suffocate not only the rights of litigants, but also the efforts of the courts to attain justice [2].

During direct examination, a hostile witness is a witness who testifies for the other side or gives unfavourable testimony to the calling party. A hostile witness is one who indicates that he is not interested in telling the truth to the court by the way he gives testimony. The hostile witness is often referred to as an "adverse witness" since he undermines the argument of the side he is supporting. The lawyer is the one who requests that the witness be found hostile by the judge. Only the court has the ability to declare a witness hostile to the prosecution. It's crucial to note that the court can't locate a witness unfriendly on its own; it has to be requested by the prosecutor.

Historical Considerations

In common law, the term "hostile witnesses" has a lengthy history. It was initially employed in the common law to defend against "Mischiefs of Tricky Witnesses," who provide misleading proof in order to undermine the cause of the party calling such a witness. Such conduct not only hurts the litigating party's interests, but it also goes against the court system's stated goal of bringing justice to a conclusion.

Common law provided a "safety net" by prohibiting witnesses from making comments that contradicted their earlier testimonies. By designating such a witness as a hostile witness, such protection was established. As a result, some criteria of hostile witnesses were defined by common law, such as "not desirous of speaking the truth at the request of the party calling him" or "the existence of a "hostile amicus" to the party calling such witnesses [3]."

The rule of not impeaching a group of his witnesses and its originality cannot be determined with confidence; it is most likely originated from a compurgation trial. This type of trial was popular on the continent as well as in England throughout the Middle Ages, where it was known as trial by wager of law. A party might construct his defense by taking an oath if compurgators declared that they thought he stated the truth. Because they merely attested to the legitimacy of the party's oath, the compurgators were little more than character witnesses. They were first and afterwards picked by the party himself from from his personal relatives.

Ancient Indian writings include perspectives that were prevalent at the time and were employed in ancient cultures. The Dharam shastras have denounced false evidence in court, pragmatically binding individuals to their responsibility of stating the truth, which has bound

society. A distinctive element of the Hindu legal system is the judge's reprimand to witnesses. They cautioned the witness to view the true testimony as his dharma and to preserve its integrity in accordance with the morals of the time. They were often terrified by a detailed portrayal of the moral ramifications of perjury. He became a witness to proclaim the truth since he grew up connecting reality with kindness and constructive natural forces with qualities. True proof gets you a place in paradise, whereas perjury earns you a place in hell, according to the axiomatic notion [4].

Reasons for a Witness's Hostile Attitude

In the current context, the question of hostile witnesses has come up numerous times. It has been noted that during trials, police witnesses frequently become hostile, undermining the case for the parties calling such witnesses. Witnesses might become hostile for a variety of reasons. Witnesses become hostile for a variety of reasons, including greed, fear, and so on. In order to satisfy their desire or overcome their fear, witnesses look hostile, i.e., back out of their earlier statement.

1. There are no Witness Protection Programs in place.

In India, many witnesses do not come forward to provide their testimony due to lengthy delays in police or judicial processes. If they are threatened or warned, they might even refuse to come forward. In India, robust witness protection law has long been needed. Witnesses are frequently attacked, maimed, and sometimes murdered before giving testimony in court. In Swaran Singh's case, the Supreme Court stated, "Not only is a witness intimidated; he is maimed; he is done away with; or even bribed." He is not in any manner safeguarded. The threat to their life is the major reason for witnesses reversing earlier statements given during the trials. The Indian Evidence Act of 1872, Sections 151 and 152, protect witnesses against inquiries that are obscene, scandalous, or offensive, as well as queries that are intended to offend or bother them. Apart from that, there are no legislative protections in place to protect witnesses against threats, enticement, or intimidation from outside sources [5].

2. Extensive and Delayed Trials

Long and drawn-out trials, in addition to the lack of a victim protection strategy, are a major source of witness retractions. The legal system moves at a glacial pace. The witness is notified that the case has been postponed and given a new date to appear when he appears in court for cross questioning. As a result, the witness feels irritated and attempts to become aggressive in order to put a stop to his difficulties for good. The Indian judiciary has been afflicted with the scourge of continuous adjournments for a long time.

They are one of the most prevalent sources of annoyance and difficulties for witnesses. They are required to pay for their own transport to the courts over large distances. They may be unable to travel large distances without abandoning their family, or they may be financially unable to do so. This irritates the witness, providing an incentive for the opposing party to threaten or coerce them into not stating the truth [6].

3. The Courts' Lack of Appropriate Facilities

Despite the essential and crucial role that witnesses play in criminal cases, the resources provided to them are restricted and insufficient. According to the 14th Law Commission

Report, witnesses in certain states are compelled to wait beneath trees on court campuses or on the verandas of courthouses. They are not protected from the weather's impacts. Even the courthouse sheds are in a bad state.

4. Allowances are not paid on time.

The Law Commission of India's 154th Report said that the allowances granted to witnesses for appearing in court are insufficient, and urged prompt payment regardless of whether or not they are being probed. Any Criminal Court can "order payment, on the part of the Government, of the appropriate expenses of any complainant or witness attending for the purpose of any investigation, trial, or other proceeding before such Court under this Code," according to Section 312 of the Criminal Procedure Code, subject to any rules made by the State Government. The majority of the time, however, the witnesses are not given enough money to eat.

5. Accused's Threats and Intimidation

Threats and intimidation are the most typical tactics employed by the accused to render witnesses unfriendly. The threat to witnesses' and their families' lives was one of the primary causes that prompted them to retract their prior statements.

Wrong convictions and acquittals both harm society, the Supreme Court held in *Krishna Mochi v. State of Bihar*. One of the reasons, according to the Supreme Court in this case, is that they are afraid to testify against an accused because of threats to their lives, especially when the defendants are habitual criminals, high-ranking government officials, or people with access to power, whether political, economic, or otherwise, including muscle power [7].

6. The High-Profile Accused's Financial Power

In most situations, a high-profile defendant uses money to escape prosecution, and in order to do so, they pay large sums of money to witnesses, who, as natural humans, are readily swayed by the accused's allurements. In such situations, the accused's use of financial power to escape criminal accountability has an impact on both witnesses and victims. As a result, such perpetrators are frequently acquitted in our criminal justice system.

Statements' Evidential Value Given by an Unfriendly Eyewitness

The Supreme Court has held in numerous decisions that declaring a witness hostile does not ipso facto negate the proof, and it is now well established that the portion of evidence that is beneficial to all parties can be used- but the court before which such evidence is relied upon must be extremely cautious in accepting such evidence. The decision was made by the Supreme Court in the case of *State of U.P. v Ramesh Prasad Misra and others*. It is also a well-established rule that if a hostile witness testifies in favor of the prosecution or the accused, his or her testimony will not be completely dismissed; rather, it will be scrutinized closely, with only the portions of the testimony that support the prosecution or defense argument being accepted.

If the judge believes the witness's credibility has not been destroyed during the process, he can admit the portion of his testimony that he finds to be creditworthy in light of other evidence on the record. As the case of *K. Anbazhagan v Superintendent of Police* demonstrated [8].

Just because someone has grown aggressive does not imply his entire argument should be rejected, according to Indian law. In the case of State of U.P. v. Ramesh Prasad Mishra and others, the law states that a hostile witness's argument to be considered as evidence cannot be completely rejected just because the individual has broken his responsibility to speak the truth or has not spoken in the prosecution's favor. In such a case, the court may examine the witness's evidence and reject only the portions that contradict the prosecution's case or reasoning.

The Impact of Hostile Witnesses on the Criminal Justice System

In recent years, the number of hostile witnesses in India has increased dramatically, raising worries about witness protection in criminal cases. It's worth noting that India lacks an adequate law to protect crime witnesses, as a consequence of which many witnesses have been hostile during trials, impeding the route to justice. Due to a lack of witness protection in a few cases, such as Jessica Lal, BMW, and Best Bakery, numerous witnesses declined to testify in court in favor of the victim and became antagonistic, resulting in the acquittal of individuals accused of horrific crimes. While explaining the role of witnesses in the criminal justice system in the Swaran Singh case, the Supreme Court stated that a criminal case is built on the foundation of evidence, evidence that is acceptable in court. Witnesses are required in both direct and circumstantial evidence in order to do this.

Under Section 39 of the Code of Criminal Procedure Act of 1973, the public is required to give police with information about a specific offense. The duty is done after the information has reached the police via that individual or another means. Failure to comply with this condition is punished under Indian Penal Code sections 176 and 202, while giving false information is penalised under section 177. Only when a person is aware of the conduct of an infraction listed in clauses I to (xii) of section 39 is he required to contact the police. Citizens will lose trust in the criminal justice system, which is meant to bring justice to victims, as a result of giving incorrect information. Victims will continue to suffer as long as the witness is hostile and does not provide accurate evidence in court, and public trust in the judicial system will be undermined and broken.

A person who commits something wrong should be punished as a moral principle in order to discourage future criminal behavior and set an example for those who commit similar crimes. The number of cases that end in a conviction of the accused, or the rate of criminal conviction, is a useful measure of how well the Criminal Justice System is operating. The issue of hostile witnesses is a major contributor to the decrease in conviction rates. In some situations, the truth never comes out, and the accused is convicted despite a lack of proof. Due to the low conviction rate of individuals convicted of severe crimes, the sentence has minimal deterrence effect. The greatest approach for an accused person to avoid criminal culpability is to get witnesses to testify against them, then have the case dismissed by the court owing to a lack of evidence. As a result of their lack of fear of the law, they will be driven to commit even more heinous crimes, ending in total anarchy in society [9].

The issue of witnesses growing antagonistic toward the criminal justice system has further eroded people's trust in the courts. The growing rate of acquittals would give the public the appearance that the court is making decisions based on factors other than the facts of the case, eroding the community's faith in the administration of justice and causing citizens to lose

respect in the judiciary. In certain situations, especially when a high-profile figure is involved, an accused's acquittal has been relied on the evidence of hostile witnesses.

3. CONCLUSION

Witnesses require far more assistance than they presently receive. We must enact rigorous witness protection legislation that considers the requirements of witnesses in our system. The media, too, carries a significant amount of blame. They should strive to offer a positive and analytical assessment of the case rather than distorting it. Arrangements should be made by the courts and law to guarantee that witnesses are safeguarded. The more witnesses who are given security, the more likely they are to present in court to testify.

Attempts to prolong trials should be avoided at all costs. This backlog of cases that take a long time to settle, as well as case adjournment on a frequent basis, should be removed. The regulations regulating the distribution of allowances should be modified so that a bad witness does not become hostile as a result of losing a big quantity of money. The ease with which an accused person is given bail in return for intimidating a witness should be examined. There is a pressing need for police changes in the way investigations are conducted. Hostile witnesses would be a common occurrence in any case unless and until the witness is made to realize that the system is created for him and that he is at peace with it.

REFERENCES

- [1] N. Philadelphoff-Puren, "Hostile witness: Torture testimony in the war on terror," *Life Writ.*, 2008, doi: 10.1080/14484520802386568.
- [2] T. A. Osinubi, "Hostile Witnesses and Queer Life in Kenyan Prison Writing," *East. African Lit. Cult. Stud.*, 2014, doi: 10.1080/23277408.2015.1065463.
- [3] M. Hildebrand Karlén, E. Roos af Hjelmsäter, C. Fahlke, P. A. Granhag, and A. Söderpalm Gordh, "Alcohol Intoxicated Witnesses: Perception of Aggression and Guilt in Intimate Partner Violence," *J. Interpers. Violence*, 2017, doi: 10.1177/0886260515599656.
- [4] D. Berti, "Hostile witnesses, judicial interactions and out-of-court narratives in a north Indian district court," *Contrib. to Indian Sociol.*, 2010, doi: 10.1177/006996671004400302.
- [5] M. S. Gibbs, J. Sigal, B. Adams, and B. Grossman, "Cross-examination of the expert witness: Do hostile tactics affect impressions of a simulated jury?," *Behav. Sci. Law*, 1989, doi: 10.1002/bsl.2370070211.
- [6] J. Ruiz, F. Expósito, and H. Bonache, "Adolescent witnesses in cases of teen dating violence: An analysis of peer responses," *Eur. J. Psychol. Appl. to Leg. Context*, 2010.
- [7] V. K. Singh, "Emerging Need for Witness Protection Laws in India Analyzing the Success and Failures," *SSRN Electron. J.*, 2017, doi: 10.2139/ssrn.1351136.
- [8] P. Ghosh, "Hostile Witnesses in India - A Menace to Criminal Justice Administration," *SSRN Electron. J.*, 2013, doi: 10.2139/ssrn.2283861.
- [9] R. Pattenden, "The Hostile Witness," *J. Crim. Law*, 1992, doi: 10.1177/002201839205600408.