



# The Indian Journal for Research in Law and Management

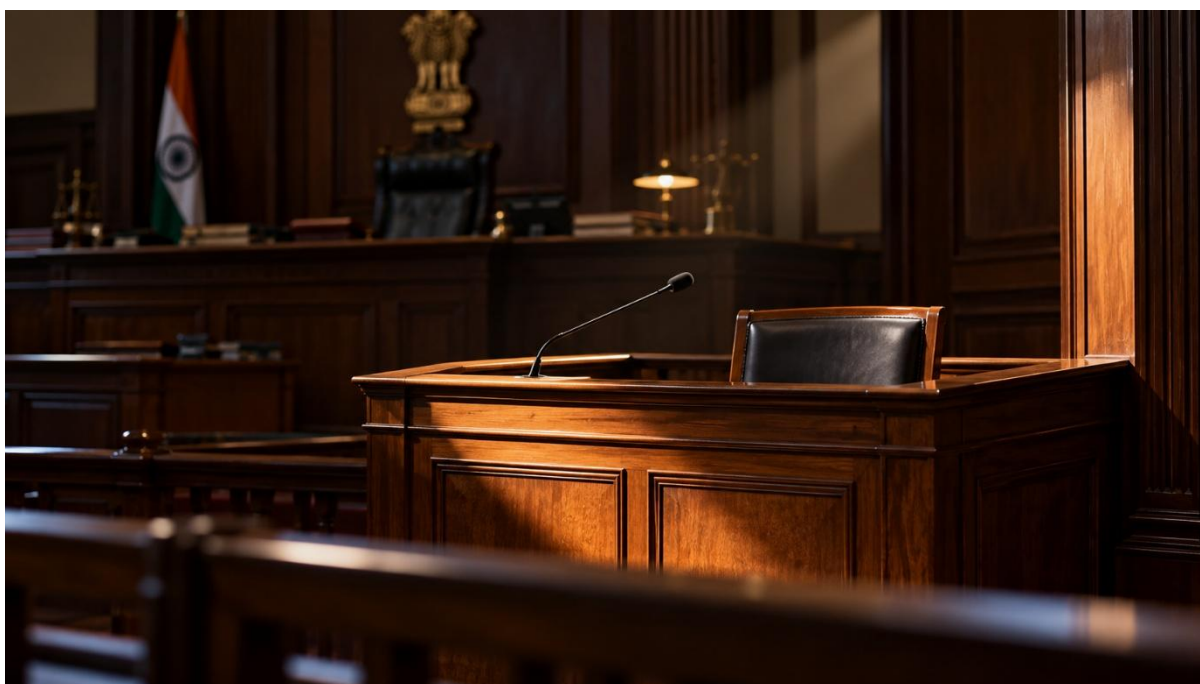
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Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

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## WHY DO WITNESSES TURN HOSTILE? THE HIDDEN PROBLEM IN CRIMINAL TRIALS

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### INTRODUCTION

Jeremy Bentham famously described witnesses as the "eyes and ears of justice"<sup>2</sup>. In any criminal justice system, the testimony delivered by an eyewitness or material witness forms the indispensable cornerstone upon which guilt or innocence is established beyond reasonable doubt<sup>3</sup>. However, criminal justice administration globally is plagued by a persistent and destructive phenomenon: the hostile witness<sup>4</sup>. A hostile witness is legally recognized as a prosecution witness who recants a prior statement given to law enforcement, exhibits an

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<sup>2</sup> Bentham, J. (1827). *Rationale of Judicial Evidence*, Vol. 1. Hunt & Clarke, London.

<sup>3</sup> Rao, V. N. (2019). "Hostile Witnesses and Criminal Justice," *JILI*, 61(2), 145–162.

<sup>4</sup> Law Commission of India (2006). *198th Report on Witness Identity Protection and Witness Protection Programme*.

obvious reluctance to disclose the truth, or delivers contradictory testimony that actively undermines the prosecution's case<sup>5</sup>. When key witnesses collapse in court, prosecution cases disintegrate, the prosecution may fail to establish guilt beyond reasonable doubt, potentially resulting in acquittal. single most dominant reason<sup>6</sup>. Unpacking why witnesses turn hostile is essential to understanding the hidden crisis haunting criminal trials today<sup>7</sup>.

## UNDERSTANDING THE LEGAL FRAMEWORK

In evidentiary law, declaring a witness "hostile" is a procedural tool by which the proponent of the question-hostile witness- may cross-examine their own witness<sup>8</sup>. Under Section 154 of the Indian Evidence Act, 1872 (and Section 157 of the Bharatiya Sakshya Adhiniyam, 2023) the trial court is empowered in their discretion to allow the side who called the witness to pose questions to the witness, questions which the other side would have been entitled to pose during cross examination<sup>9</sup>. Importantly, declaring a witness hostile does not automatically render the witness's entire testimony inadmissible or efface it from the record; the court may rely upon those portions of the testimony that are found to be credible and corroborated by other evidence<sup>10</sup>.

As established in cases such as *Sat Paul v. Delhi Administration* and *R.K. Dey v. State of Orissa*, a hostile witness' testimony that is credible and supported by independent material evidence can serve as a basis for the court's decision<sup>11</sup>. However, when the chief eye-witness or other relevant witness backtracks on primary facts, the case for the prosecution is compromised to the extent that it tends to result in an acquittal for reasonable doubt<sup>12</sup>.

## WHY DO WITNESSES TURN HOSTILE? THE CORE CAUSES

Witnesses rarely recant sworn statements without powerful external pressures<sup>13</sup>. The factors compelling a witness to turn hostile are complex and fall into five primary causes:

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<sup>5</sup> Sarkar, P. C. (2023). *Law of Evidence*, 20th Ed., LexisNexis.

<sup>6</sup> Vibhute, K. I. (2015). *Criminal Justice: A Human Rights Perspective*, Eastern Book Company.

<sup>7</sup> Monir, M. (2022). *Principles and Digest of the Law of Evidence*, Universal Law Publishing.

<sup>8</sup> Indian Evidence Act, 1872, § 154; Bharatiya Sakshya Adhiniyam, 2023, § 157.

<sup>9</sup> Monir, M. (2022). *Law of Evidence*, Universal Law Publishing, p. 890.

<sup>10</sup> *R.K. Dey v. State of Orissa*, (1977) 2 SCC 571.

<sup>11</sup> *Sat Paul v. Delhi Administration*, 1976 AIR 294 (SC).

<sup>12</sup> Gaur, K. D. (2021). *Textbook on Indian Penal Code and Evidence*, Oxford University Press.

<sup>13</sup> Thaman, S. C. (2013). "Comparative Criminal Procedure and Witness Hostility," *Int'l J. Evid.*, 17(3), 201–228.



### **1. Intimidation, Physical Threats, and Fear of Retaliation**

Direct physical violence, extortion, and life-threatening danger aimed at witnesses or their families represent a major reason for witness hostility<sup>14</sup>. When violent criminals or influential individuals stand trial, witnesses face immediate peril<sup>15</sup>. Lacking an accessible witness protection program, ordinary citizens naturally prioritize personal survival over civic duty<sup>16</sup>.

### **2. Monetary Inducements and Financial Corruption**

In high-profile criminal trials involving wealthy defendants, financial bribery frequently replaces physical intimidation<sup>17</sup>. Witnesses are bought off through cash payouts, property transfers, or settlements to deliberately suppress the truth, feign sudden memory loss, or deny identifying the accused during trial<sup>18</sup>.

### **3. Procedural Delays and Courtroom Harassment**

The judicial process itself inflicts severe psychological fatigue on witnesses<sup>19</sup>. Criminal trials frequently drag on for years, requiring witnesses to make endless court appearances at their

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<sup>14</sup> National Crime Records Bureau (NCRB) (2022). *Crime in India Report*, Ministry of Home Affairs.

<sup>15</sup> Supreme Court of India (2018). *Witness Protection Scheme, 2018*, endorsed in *Mahender Chawla v. Union of India*, (2019) 14 SCC 615.

<sup>16</sup> Amnesty International India (2017). *Justice Under Threat: Witness Vulnerability in Rural India*.

<sup>17</sup> Baxi, U. (2008). *The Crisis of the Indian Legal System*, Vikas Publishing House.

<sup>18</sup> *State of U.P. v. Ramesh Prasad Misra*, (1996) 10 SCC 360.

<sup>19</sup> Law Commission of India (1996). *154th Report on Code of Criminal Procedure*.

own expense <sup>20</sup>. As highlighted in *Swaran Singh v. State of Punjab*, witnesses in trial courts face systemic indifference—endless adjournments, overcrowded corridors, and aggressive cross-examinations <sup>21</sup>. This exhaustion drives witnesses to recant simply to escape legal proceedings <sup>22</sup>.

#### 4. Socio-Economic Dependencies and Local Power Dynamics

In close-knit rural or suburban communities, socio-economic dependencies dictate witness behaviour <sup>23</sup>. When the accused belongs to a dominant social class or acts as a primary local employer, witnesses face severe social boycotts, eviction, or loss of livelihood if they testify truthfully <sup>24</sup>.

#### 5. Flawed Police Investigations and Fabricated Records

Witness hostility frequently originates from police misconduct or improper record-keeping <sup>25</sup>. Investigating officers sometimes fabricate or exaggerate witness statements under Section 161 CrPC (or Section 180 BNSS) <sup>26</sup>. When brought before a judge, the witness truthfully denies making such statements, leading to a "hostile" designation <sup>27</sup>.

### THE IMPACT ON THE CRIMINAL JUSTICE SYSTEM

When witnesses routinely turn hostile, the ripple effects severely damage the legal system:

- **Plummeting Conviction Rates:** The collapse of primary eyewitness testimonies leaves prosecution cases hollow, directly lowering conviction rates for serious offenses <sup>28</sup>.
- **Erosion of Judicial Legitimacy:** Repeated acquittals of influential defendants foster a public perception that courts favor the wealthy and powerful <sup>29</sup>.

<sup>20</sup> National Law University Delhi (2018). *Empirical Study on Hostile Witnesses in Trial Courts*.

<sup>21</sup> *Swaran Singh v. State of Punjab*, (2000) 5 SCC 578.

<sup>22</sup> Justice Malimath Committee (2003). *Report on Reforms of Criminal Justice System*, Vol. 1.

<sup>23</sup> NLU Delhi (2018). *Empirical Study on Hostile Witnesses*.

<sup>24</sup> Malimath Committee (2003). *Report on Reforms of Criminal Justice System*.

<sup>25</sup> Code of Criminal Procedure, 1973, § 161; Bharatiya Nagarik Suraksha Sanhita, 2023, § 180.

<sup>26</sup> *Khujji alias Surendra Tiwari v. State of Madhya Pradesh*, (1991) 3 SCC 627.

<sup>27</sup> Indian Penal Code, 1860, §§ 191, 193; Bharatiya Nyaya Sanhita, 2023, §§ 227, 229.

<sup>28</sup> Ferguson, P. R. (2016). "Protecting Vulnerable Witnesses in Criminal Trials," *Crim. L. Rev.*, 2016(8), 512–529.

<sup>29</sup> UNODC (2008). *Good Practices for the Protection of Witnesses in Criminal Proceedings*, Vienna.

- **Normalization of Perjury:** When witnesses lie under oath without facing swift penal consequences, perjury becomes normalized within courtrooms<sup>30</sup>.

## NOTABLE CASE STUDIES

Several landmark criminal trials demonstrate the catastrophic impact of hostile witnesses:

- **The Best Bakery Case (*Zaheera Sheikh v. State of Gujarat*):** During the trial of a violent communal riot case, key eyewitnesses turned hostile en masse due to severe intimidation and fear for their lives<sup>31</sup>. Recognizing the gross miscarriage of justice, the Supreme Court ordered a historic retrial outside the state to ensure witness safety<sup>32</sup>.
- **The Jessica Lall Murder Case (*Manu Sharma v. State*):** Over 30 prosecution witnesses retracted their statements under heavy pressure and financial inducement in a murder trial. Massive public outcry and appellate review eventually resulted in a conviction, highlighting how money corrupts witness testimony<sup>33</sup>.



<sup>30</sup> *Suo Motu Proceedings on Perjury*, (2015) 11 SCC 712.

<sup>31</sup> *Zaheera Habibullah Sheikh v. State of Gujarat*, (2004) 4 SCC 158.

<sup>32</sup> *Zaheera Habibullah Sheikh (VI) v. State of Gujarat*, (2006) 3 SCC 374.

<sup>33</sup> Modak, A. (2011). "Media Trial and Hostile Witnesses," *Cambridge Student Law Review*, 7(1), 88–104.

## SOLUTIONS AND THE WAY FORWARD

Addressing the hostile witness crisis requires structural reforms:

- 1. Implementation of Robust Witness Protection Frameworks:** Statutory witness protection mechanisms—including identity concealment, safe houses, video-link testimony, and security details—must be universally available to vulnerable witnesses<sup>34</sup>.
- 2. Mandatory Judicial Recording of Statements:** Key witness statements should be recorded before a Magistrate under Section 164 CrPC (or Section 183 BNSS) during early investigation, preventing easy retractions<sup>35</sup>.
- 3. Strict Prosecution of Perjury:** Courts must actively invoke anti-perjury statutes against witnesses who deliberately make false statements under oath without valid justification<sup>36</sup>.
- 4. Dignified Treatment and Fast-Track Trials:** Day-to-day trial schedules for serious offenses and proper witness waiting facilities reduce trial fatigue and courtroom harassment<sup>37</sup>.

## CONCLUSION

A criminal trial cannot deliver genuine justice when its primary pillars—the witnesses—are allowed to collapse under threat, bribe, or institutional neglect<sup>38</sup>. Declaring a witness hostile is essentially a procedural response and, by itself, does not address the underlying causes of witness hostility<sup>39</sup>. Protecting witnesses, streamlining judicial procedures, and strictly penalizing deliberate perjury are essential to restoring integrity to the criminal justice system<sup>40</sup>.

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<sup>34</sup> Ministry of Home Affairs, Govt. of India (2018). *Draft Witness Protection Scheme*.

<sup>35</sup> Code of Criminal Procedure, 1973, § 164; Bharatiya Nagarik Suraksha Sanhita, 2023, § 183.

<sup>36</sup> Law Commission of India (2017). *268th Report on Amendments to CrPC*, pp. 45–50.

<sup>37</sup> *K.P. Tamilmaran v. State*, (2025) Supreme Court Rulings on Witness Deposition.

<sup>38</sup> Vibhute, K. I. (2015). *Criminal Justice Administration*, Eastern Book Company.

<sup>39</sup> UNODC (2012). *Manual on Mutual Legal Assistance and Witness Protection*, New York.

<sup>40</sup> Law Commission of India (2006). *198th Report on Witness Protection*.

## LIST OF REFERENCES

1. Bentham, Jeremy, *Rationale of Judicial Evidence*, Vol. 1 (Hunt & Clarke, London, 1827).
2. Baxi, Upendra, *The Crisis of the Indian Legal System* (Vikas Publishing House, 2008).
3. Ferguson, P. R., "Protecting Vulnerable Witnesses in Criminal Trials," *Criminal Law Review*, 2016(8), 512–529.
4. Gaur, K. D., *Textbook on Indian Penal Code and Evidence* (Oxford University Press, 2021).
5. Law Commission of India, *154th Report on the Code of Criminal Procedure* (1996).
6. Law Commission of India, *198th Report on Witness Identity Protection and Witness Protection Programme* (2006).
7. Law Commission of India, *268th Report on Amendments to the Code of Criminal Procedure* (2017).
8. Malimath Committee, *Report on Reforms of Criminal Justice System*, Vol. 1 (2003).
9. Modak, A., "Media Trial and Hostile Witnesses," *Cambridge Student Law Review*, Vol. 7, No. 1, 88–104 (2011).
10. Monir, M., *Principles and Digest of the Law of Evidence* (Universal Law Publishing, 2022).
11. National Crime Records Bureau, *Crime in India Report 2022* (Ministry of Home Affairs, Government of India, 2022).
12. National Law University Delhi, *Empirical Study on Hostile Witnesses in Trial Courts* (2018).
13. Rao, V. N., "Hostile Witnesses and Criminal Justice," *Journal of the Indian Law Institute*, Vol. 61, No. 2, 145–162 (2019).

14. Sarkar, P. C., *Law of Evidence*, 20th ed. (LexisNexis, 2023).
15. Thaman, S. C., “Comparative Criminal Procedure and Witness Hostility,” *International Journal of Evidence*, Vol. 17, No. 3, 201–228 (2013).
16. Vibhute, K. I., *Criminal Justice: A Human Rights Perspective* (Eastern Book Company, 2015).
17. Vibhute, K. I., *Criminal Justice Administration* (Eastern Book Company, 2015).
18. Amnesty International India, *Justice Under Threat: Witness Vulnerability in Rural India* (2017).
19. Ministry of Home Affairs, Government of India, *Draft Witness Protection Scheme* (2018).
20. Supreme Court of India, *Witness Protection Scheme, 2018*.
21. United Nations Office on Drugs and Crime (UNODC), *Good Practices for the Protection of Witnesses in Criminal Proceedings* (Vienna, 2008).
22. United Nations Office on Drugs and Crime (UNODC), *Manual on Mutual Legal Assistance and Witness Protection* (New York, 2012).
23. *Bharatiya Nagarik Suraksha Sanhita*, 2023, §§ 180, 183.
24. *Bharatiya Nyaya Sanhita*, 2023, §§ 227, 229.
25. *Bharatiya Sakshya Adhinyam*, 2023, § 157.
26. *Code of Criminal Procedure*, 1973, §§ 161, 164.
27. *Indian Evidence Act*, 1872, § 154.
28. *Indian Penal Code*, 1860, §§ 191, 193.
29. *Khujji alias Surendra Tiwari v. State of Madhya Pradesh*, (1991) 3 SCC 627.
30. *K.P. Tamilmaran v. State*, (2025).
31. *R.K. Dey v. State of Orissa*, (1977) 2 SCC 571.
32. *Sat Paul v. Delhi Administration*, 1976 AIR 294 (SC).

33. *Siddharth Vashisht alias Manu Sharma v. State (NCT of Delhi)*, (2010) 6 SCC 1.
34. *State of U.P. v. Ramesh Prasad Misra*, (1996) 10 SCC 360.
35. *Suo Motu Proceedings on Perjury*, (2015) 11 SCC 712.
36. *Swaran Singh v. State of Punjab*, (2000) 5 SCC 578.
37. *Zaheera Habibullah Sheikh v. State of Gujarat*, (2004) 4 SCC 158.
38. *Zaheera Habibullah Sheikh (VI) v. State of Gujarat*, (2006) 3 SCC 374.
39. *Mahender Chawla v. Union of India*, (2019) 14 SCC 615.