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THE MENACE OF HOSTILE WITNESSES: STRENGTHENING LEGAL PROVISIONS FOR FAIR TRIALS

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ABSTRACT

Success of any system of justice is intricately linked with the believability and genuineness of evidence provided by witnesses. But the age-old problem of hostile witnesses has gravely impaired the impartial dispensation of justice, particularly in juridical systems such as India. The article sets out to explore the regime of statute and jurisprudence governing hostile witnesses, critically analyzes milestone judicial precedents, and evaluates international best practices in order to stem this scourge. Moreover, it also makes certain far-reaching legal and procedural reforms that are needed to further secure witnesses and preserve the integrity of well-functioning fair trial principles.

KEYWORDS: Hostile witness, Evidence Law, Fair Trial, Witness Protection, Criminal Jurisdictions etc.

INTRODUCTION:

A witness's affidavit is a cornerstone in the judicial process for guaranteeing establishment of fact and administration of justice. Jeremy Bentham, in characterizing witnesses most appropriately as "the eyes and ears of justice"² emphasized their unavoidable role. If, however, once witnesses tamper and falsify

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² Jeremy Bentham, *Rationale of Judicial Evidence*, vol. 1, at 1 (John S. Mill ed., Hunt & Clarke 1827).

their facts under compulsion, coercion, or money inducement, the very fundamentals of an equitable trial are negated.

The expression 'hostile witness' does not have definite statutory connotation in Indian law; its limits have been demarcated through judicial interpretation. The Indian Evidence Act, 1872, particularly Section 154³ (Section 157 of Bhartiya Sakshya Adhiniyam, 2023⁴), empowers a court to permit a party to cross-examine its own witness in case there arises an intimation of hostility. Hostile witness is when the conduct or evidence of the witness shows an intention to deviate from truth and thus jeopardizes the equity of the case of prosecution.

The paper discusses the problem of hostile witnesses in a critical view, examines both domestic law model and comparative model, and provides an integrated approach to reform mechanisms of the fair trial. The hostile witness is one of India's most acute problems of justice, particularly of criminal prosecution when evidence through the witness's contribution is overwhelmingly predominant in proclaiming a defendant to be either guilty or innocent. A hostile witness is someone who, having been subpoenaed by a party to present his testimony, presents evidence contrary to the interest of the party or varying from that already provided by him. The culture of hostile witnesses has turned into a common phenomenon in high-profile cases such as the Jessica Lal murder case (2006⁵), the Best Bakery case (2002⁶), and the Nirbhaya case (2012⁷). Failure by key witnesses to support existing evidence has resulted in wrongful acquittals, delay of justice, and erosion of public trust in the judiciary.

In India, hostile witness law provisions are typically contained in Indian Evidence Act, 1872 now Bhartiya Sakshya Adhiniyam, 2023, Code of Criminal Procedure,

³ Indian Evidence Act, 1872, § 154 (India).

⁴ Bhartiya Sakshya Adhiniyam, 2023, § 157 (India).

⁵ Santosh Kumar Singh v. State, (2010) 9 SCC 747 (India).

⁶ Zahira Habibullah Sheikh v. State of Gujarat, (2004) 4 SCC 158 (India).

⁷ Mukesh v. State (NCT of Delhi), (2017) 6 SCC 1 (India).

1973, and Indian Penal Code, 1860⁸. Judiciary in some historical judgments also provided profound interpretations to combat the issue. This paper is a comprehensive review of hostile witnesses' law provisions, judicial precedents, challenges in implementation, and suggested reforms.

LEGAL FRAMEWORK REGULATING HOSTILE WITNESSES IN INDIA:

Definition and Concept of a Hostile Witness:

Indian statutory law does not have a clear definition of "hostile witness," but by judicial interpretations and legal precedents, the term hostile witness has been developed. A hostile witness in common law countries is an individual who, instead of testifying in support of the case of the party who called him, testifies against the interest of the aforementioned party. The Supreme Court of India in *Sat Paul v. Delhi Administration*⁹ held that a hostile witness is not only a witness whose testimony is unfavorable but also a witness who manifests an avowed intention of contradicting or sabotaging the case of the party that called them. Definition of hostile witness as a concept is important because it makes the examining party capable of placing them under cross-examination and of using leading questions to challenge their evidence.

Applicable Statutory Provisions Controlling Hostile Witnesses:

(a) *Section 154 of the Indian Evidence Act, 1872 (Section 157 of Bhartiya Sakshya Adhiniyam, 2023)*¹⁰.

One of the most significant legal provisions addressing the topic of hostile witnesses in India is Section 154 of the Indian Evidence Act, 1872 (Section 157 of *Bhartiya Sakshya Adhiniyam, 2023*)¹¹. According to this provision, the court can permit the party who had summoned a witness to cross-examine the witness when he turns

⁸ Indian Evidence Act, 1872; *Bhartiya Sakshya Adhiniyam, 2023*; Code of Criminal Procedure, 1973; Indian Penal Code, 1860 (India).

⁹ *Sat Paul v. Delhi Admin.*, AIR 1976 SC 294 (India).

¹⁰ Indian Evidence Act, 1872, § 154; *Bhartiya Sakshya Adhiniyam, 2023*, § 157 (India).

¹¹ *Supra* note 9

hostile, i.e., when he exhibits behavior contrary to the party who had summoned him. As a rule, cross-examination is maintained as the right of the opposing party in trying to impeach the credibility of a witness. If a witness gives testimony that is inconsistent with what they have previously testified to or appears to be prejudiced, biased, or not prepared to give true testimony, the court, at its discretion, may allow the prosecution or defense to cross-examine their own witness.

The section specifically gives: "The Court may in its discretion permit the party calling a witness to interrogate him on any matters which may conveniently be inquired into on cross-examination by the adverse party."¹² This provision in law makes it a point to test the credibility of a witness stringently where there is an accusation of tampering, threat, or presenting false evidence. It allows questions and leading questions which can impeach the veracity of the statement of the witness. It works best where the witness is intimidated, offered a bribe, or influenced through outside means in order to modify evidence.

Judicial Interpretations and Applications of Section 154 (Section 157 of Bhartiya Sakshya Adhiniyam, 2023):

The Supreme Court and the High Courts of India have pondered the extent and meaning of Section 154 (Section 157 of Bhartiya Sakshya Adhiniyam, 2023), again and again in significant cases. *Sat Paul v. Delhi Administration* (1976 AIR 294)¹³ was perhaps such a milestone judgment, wherein the Supreme Court elucidated that adversely marking a witness does not render the entirety of his evidence unreliable. Instead, courts must sift and reject cogent portions of their evidence. Furthermore, in the *State of U.P. v. Ramesh Prasad Misra*¹⁴, the Supreme Court reaffirmed that the evidence of an adverse witness is never disbelieved but must be examined to find out whether or not any part of it can be accepted. The court emphasized that merely

¹² Indian Evidence Act, 1872, § 154 (India); Bhartiya Sakshya Adhiniyam, 2023, § 157 (India).

¹³ Supra note 8

¹⁴ *State of U.P. v. Ramesh Prasad Misra*, (1996) 10 SCC 360 (India).

because a witness recants his earlier testimony, it doesn't imply that the whole of his deposition is false.

In another case, *Koli Lakhmanbhai Chanabhai v. State of Gujarat*¹⁵, the Supreme Court held that judicial discretion on the part of the court under Section 154 (Section 157 of *Bhartiya Sakshya Adhiniyam, 2023*¹⁶), to permit cross-examination will be exercised judiciously and not utilized to create unnecessary contradictions. The judiciary will permit cross-examination only when it becomes clear that the witness is deliberately concealing the truth or contradicting previous statements.

Importance of Section 154 in Daily Life:

- Through the provision of the right of cross-examination of a witness by the party calling the witness, Section 154 averts miscarriage of justice and enables substantial evidence to be challenged with falsehood.
- The section protects the interest of justice through the ability of the judges to scrutinize witness behavior and utterances without reckless exclusion of evidence.
- As the reality is that various witnesses alter their testimonies under pressure from outside, Section 154 is a check-and-balance mechanism for seeking truth in spite of intimidatory efforts.

*(b) Section 145 of the Indian Evidence Act, 1872 now (Section 148 of Bhartiya Sakshya Adhiniyam, 2023)*¹⁷.

The second significant provision harmonious to Section 154 in dealing with hostile witnesses is Section 145 of the Indian Evidence Act, 1872 (Section 148 of *Bhartiya Sakshya Adhiniyam, 2023*). The provision is significant in 'Cross-Examination of a witness' evidence from his or her earlier written or recorded statements. Once a

¹⁵ *Koli Lakhmanbhai Chanabhai v. State of Gujarat*, (1999) 8 SCC 624 (India).

¹⁶ *Supra* note 9.

¹⁷ Indian Evidence Act, 1872, § 145; *Bhartiya Sakshya Adhiniyam, 2023*, § 148 (India).

witness changes his or her evidence in court, the earlier statements of the witness are brought on record against them to establish lies and inconsistency.

The provision states:

"A witness may be cross-examined on what he has said before in writing or reduced into writing, and portions thereof may be used to contradict him."

This section allows for the production of contradictory statements to previous testimony provided to police officers, magistrates, or other judicial officers. It is an important provision in hostile witness cases because of coercion, fear, or inducement. By confronting a witness with previous testimony, courts can determine if the contradiction is wilful or an honest mistake.

JUDICIAL INTERPRETATION AND APPLICATION OF SECTION 145 (SECTION 148 OF BHARTIYA SAKSHYA ADHINIYAM, 2023):

The Supreme Court in a series of cases has established that Section 145 (Section 148 of Bhartiya Sakshya Adhinyam, 2023) has to be interpreted in a careful way to discern inconsistencies in a witness's evidence. In the case of *Tara Singh v. State*¹⁸ the court set out the condition that previous assertions of the witness must be necessarily brought out and put to the witness to reconcile the contradiction. This decision holds that inconsistencies alone do not lead to erroneous conclusions but the credibility of the witness is tested according to the law of the land. In *Tehsildar Singh v. State of U.P.*¹⁹ The Supreme Court held firmly that only so much of the earlier statement which is material on the contradiction, can be recorded as evidence, so that courts are not biased with statements utterly irrelevant and dismissal of a witness. In *Shri Bhagwan v. State of Rajasthan* 2001 6 SCC 296²⁰, it was held that mere contradiction in evidence will not render the witness not worthy of credit unless the contradiction goes to the root of the case. The decision reinforces the

¹⁸ *Tara Singh v. State*, AIR 1951 SC 441 (India).

¹⁹ *Tehsildar Singh v. State of U.P.*, AIR 1959 SC 1012 (India)

²⁰ *Shri Bhagwan v. State of Rajasthan* 2001 6 SCC 296 (India).

reality that trivial contradictions in evidence cannot mask the overall credibility of the witness.

Significance of Section 145 of Evidence Act, 1872 (Section 148 of Bhartiya Sakshya Adhiniyam, 2023) in Real-life Situations:

- Section 145 of Evidence Act, 1872 (Section 148 of Bhartiya Sakshya Adhiniyam, 2023) enhances cross-examination as it enables the utilization of prior inconsistent statements in order to contradict a witness.
- The section is a deterrent for perjury as witnesses cannot conveniently change their deposition without being confronted with the punishment.
- By ensuring earlier statements to be cross-referred, this section makes sure that doctored statements won't go unnoticed and the judicial process is made fairer.

Section 154 and Section 145 of the Indian Evidence Act 1872 (Section 157 and Section 148 of Bhartiya Sakshya Adhiniyam, 2023), are both used to address hostile witnesses and determine the truthfulness of evidence during court trials. While Section 154 (Section 157 of Bhartiya Sakshya Adhiniyam, 2023) provides for the right to cross-examination by the defense or prosecution upon a witness who makes inconsistent statements, Section 145 (Section 148 of Bhartiya Sakshya Adhiniyam, 2023) entails producing and leading earlier statements to ascertain false evidence and detect contradictions.

Judicial rulings have defined the ambit and scope of such provisions in such a way that the reliability of witnesses is examined objectively and objectively. Their efficiency, nevertheless, will depend immensely on stern implementation, good judicial sense, and safeguarding in procedure so as not to abuse. Against growing numbers of hostile witnesses due to pressure and bribery, a proper legal framework backed by protection measures for witnesses is needed to bolster justice and the integrity of the Indian judiciary.

JUDICIAL PRECEDENTS ON HOSTILE WITNESSES IN INDIA:

The trend of hostile witnesses is still a strong impediment to the dispensation of justice in the proper manner in India. A witness is said to be hostile when he/she recants or materially changes from his previous statements, thereby tainting the integrity of judicial proceedings. These aberrations are usually caused by outside pressures like intimidation, coercion, economic inducement, or political pressure. Indian courts, particularly the Supreme Court, have decided this issue time and again, laying down guiding principles so that the system of delivery of justice is not undermined by witness hostility. Through judicial precedents, the Indian judiciary has also evolved legal standards on hostile witness testimony in respect of their admissibility, credibility, and probative value.

SIGNIFICANT SUPREME COURT JUDGMENTS:

(a) Sat Paul v. Delhi Administration (1976 AIR 294)²¹:

Here in this path-breaking case, the Supreme Court of India clarified the legal impact of a hostile witness and to what extent their testimonial evidence could be employed with or without limitation. It was established in the case by the Court that even if the witness has been thus characterized it doesn't necessarily mean that their entire evidence is inadmissible now. Rather, the evidence is to be tested against corroborating evidence and judicial scrutiny. The Court pointed out that a judge should not automatically exclude the testimony of an adverse witness but should pay close attention to what aspects of his deposition can be believed and accepted.

The Court also pointed out that cross-examination of an adverse witness by the calling party is not ipso facto²² evidence that his testimony is false. Instead, their evidence must be considered as a whole, and the courts must distinguish uncredible parts from parts that may still be of evidential worth. The court in this judgment

²¹ Sat Paul v. Delhi Administration (1976 AIR 294 India.

²² Black's Law Dictionary 961 (11th ed. 2019) (defining "ipso facto" as "by the fact itself; by the very nature of the situation").

supported the discretion of the trial court to judge the credibility of hostile witness evidence and thereby reduced the adverse impact of witness hostility on criminal trials.

(b) State of U.P. v. Ramesh Prasad Misra (1996 SCC (Cr) 493):²³

In this decision, the Supreme Court again said that even if the hostile witness is so transformed, his or her evidence is not rendered absolutely useless. The Court re-stated the doctrine that as much of the testimony as is corroborated by independent evidence or consistent with material facts on record may be acted upon. The Court also clarified that the statements given during the course of investigation before the magistrate or police can be used to contradict the witness under Section 145 of the Indian Evidence Act, 1872 (Section 148 of Bhartiya Sakshya Adhiniyam, 2023).

This ruling was a milestone in the regulation of wrongful acquittals since it allowed the courts to retain pieces of the hostile witness's evidence even though they were hostile in nature. This ruling also served the purpose of supporting the judicial discretion factor when identifying hostile evidence, hence enabling the courts to always be on guard in situations where witness intimidation is suspected.

(c) Zahira Sheikh v. State of Gujarat (Best Bakery Case):²⁴

The Best Bakery case has its roots in the 2002 Gujarat riots where 14 persons were burnt to death and one of the prosecution's key witnesses was recanting on the stand. The Supreme Court took seriously systematic intimidation and coercion of witnesses and held that these were the kind of situations that amounted to a gross miscarriage of justice. The Court noted the failure of the law enforcement agencies to provide adequate witness protection, thereby allowing the accused to exert undue pressure on witnesses.

²³ State of U.P. v. Ramesh Prasad Misra 1996 SCC (Cr) 493 India.

²⁴ Zahira Habibullah Sheikh v. State of Gujarat, (2004) 4 SCC 158 (India).

In its judgment, the Supreme Court noted the necessity of an effective witness protection system in India. The ruling highlighted the loopholes of the Indian criminal justice system under which witnesses, in fear of retaliation, become hostile or turn hostile. The Court directed the government to take prompt action in the direction of preparation of legal provisions for the protection of witnesses. This case served as a catalyst for policy discussion regarding witness protection, and the Witness Protection Scheme, 2018²⁵ was implemented with the view to safeguarding witnesses from intimidation.

(d) Swaran Singh v. State of Punjab (2000 5 SCC 668):²⁶

In this situation, the Supreme Court was severe on perjury and false witness and warned against the growing danger of hostile witnesses. The Court further stated that voluntarily furnishing false evidence or voluntarily attempting to mislead the court is to be criminalized under Sections 191 and 193 of the Indian Penal Code (IPC), 1860 (Section 227 and 229 of Bhartiya Nyaya Sanhita²⁷, 2023). The ruling also laid importance on the ethical and legal responsibility of a witness to uphold the truth and condemned the act of retracting statements at the request of someone.

This judgment had long-lasting effects on witness reliability as it provided authority to the courts to act firmly against such individuals who attempted to compromise judicial proceedings. The Court also requested the trial courts to scrutinize the reasons behind witness hostility and, if necessary, take proceedings against them for obstructing justice.

(e) Krishna Kumar Malik v. State of Haryana (2011 7 SCC 130):²⁸

This case is on a rape case in which one of the major prosecution witnesses went hostile, thereby thwarting the victim's pursuit of justice. In the view of the Supreme

²⁵ Witness Protection Scheme, 2018, approved in *Mahender Chawla v. Union of India*, (2019) 14 SCC 615 (India).

²⁶ *Swaran Singh v. State of Punjab*, (2000) 5 SCC 668 (India).

²⁷ Indian Penal Code, 1860, §§ 191, 193; *Bhartiya Nyaya Sanhita*, 2023, §§ 227, 229 (India).

²⁸ *Krishna Kumar Malik v. State of Haryana*, (2011) 7 SCC 130 (India).

Court, when the case involves sexual violence, where threats form a significant aspect of such cases, courts must be even more cautious. The Court held that even if a recantation by a witness for the prosecution of his or her testimony occurs, other forms of evidence such as forensic reports, medical reports, and circumstantial evidence need to be employed to establish the guilt of the accused.

***(f) Dinubhai Boghabhai Solanki vs State Of Gujarat:*²⁹**

On 30 October, 2017 The High Court, thereafter, described the phenomena of hostile witnesses which have assumed alarming proportion to the criminal justice system in India and adversely affecting the fair trial and justice dispensation system.

***(g) Ramesh and others v. State of Haryana*³⁰**

Wherein a serious note of witnesses turning hostile in criminal cases has been highlighted and various reasons noted therein making the witnesses retract their statements before Court and turning hostile, the High Court has stated that in the instant case, the realistic view of the matter would demonstrate that the major cause for turning witnesses hostile was the result of threat and intimidation.

This judgment once again reasserted the judicial dogma that testimony of hostile witnesses could be torn apart for fragments of truth and not rejected en masse. The order also underscored imposition of special protection by law in trial in cases under offenses against women and weaker sections in which hostility is bound to be created among witnesses by pressures or intimidations.

JUDICIAL TRENDS IN DEALING WITH HOSTILE WITNESSES:

Recently, the Indian judiciary has all the more taken a proactive and reformative stance in handling hostile witnesses, appreciating their all-important role in the criminal justice system and its wider implications on delivery of justice. A hostile witness, as defined under Section 149 of Bhartiya Sakshya Adhiniyam, 2023 (Section

²⁹ Dinubhai Boghabhai Solanki v. State of Gujarat, (2018) 17 SCC 142 (India).

³⁰ Ramesh v. State of Haryana, (2017) 1 SCC 529 (India).

154 of the Indian Evidence Act, 1872), is a witness who varies from his/her former statements before trial through coercion, intimidation, or inducement.

Traditionally, the hostile witnesses has caused the downfall of key criminal cases, high-profile trials like the Jessica Lal murder case, the Best Bakery case, and the 2002 Gujarat riots trial³¹, which have revealed the structural deficiencies in witness protection and the dangers of a prosecution-driven system. Judicial utterances have witnessed an increasing reflection of an appeal for institutional change and strict accountability. The Supreme Court in *Ramesh Harijan v. State of Uttar Pradesh* (2012³²) held that just because a witness becomes hostile does not erase their testimony entirely; the courts need to inquire as to whether some portion of their statement can be depended upon. In *Sat Paul v. Delhi Administration* (1976), the Court established a precedent that the statement of even a hostile witness cannot be rejected wholesale if it is probative.

A more recent decision, *Krishna Kumar Malik v. State of Haryana* (2011³³), drew attention to the fact that hostile evidence does not amount to blanket rejection but requires judicious judicial inquiry. This changing judicial direction has gone hand in hand with statutory and policy changes. The establishment of the Witness Protection Scheme, 2018, sanctioned by the Supreme Court in *Mahender Chawla v. Union of India*, constituted a historical institutional promise towards witness testimony integrity protection. The scheme ensures anonymity, compensation, and physical protection, treating the underlying reasons for enmity among witnesses-vulnerability and fear. A number of High Courts have also joined the chorus.

The Delhi High Court in 2023, while dealing with a case concerning organized crime, reiterated the necessity of robust safeguards and held that "justice cannot be a casualty of social pressure or political influence." Moreover, numerous Law

³¹ "[2002 Gujarat Riots: Naroda Gam Massacre Case Verdict](#)," *The Hindu* (Apr. 20, 2023)

³² *Ramesh Harijan v. State of U.P.*, (2012) 5 SCC 777 (India).

³³ *Krishan Kumar Malik v. State of Haryana*, (2011) 7 SCC 130 (India).

Commission Reports, including the 178th³⁴ and 198th³⁵ Reports have focused on the protection of witnesses and recommended amendments for curbing the evil of hostile witnesses.

Investigations by news media like The Hindu, The Indian Express, and Scroll have further accounted for cases in which police and prosecutorial failure resulted in the recantation of previous statements by witnesses because of threats or offers. For example, in the case of Bilkis Bano³⁶, witnesses were threatened, and their protection proved to be decisive in obtaining a conviction. Legal analysts have contended that as much as the judiciary has demonstrated admirable robustness, the problem of hostility is symptomatic of larger systemic decline—lax investigation, tardy trials, and weak protections. The Bharatiya Sakshya Adhiniyam, 2023 (replacement law for the Indian Evidence Act), though updating evidentiary practice, needs to be interpreted in a way that enhances witness confidence through judicial activism.

Finally, the judicial trend in India demonstrates a slow but significant change—courts are no longer mere recipients of retracted statements but are now empowered interpreters of the truth, supported by an expanding corpus of protective jurisprudence, institutional measures, and popular consciousness. But until witness protection is a core prosecutorial priority and perjury statutes are enforced rigorously, the issue of hostile witnesses will persist in undermining confidence in the justice system. For a democratic rule of law society, therefore, addressing hostile witnesses is not just a process challenge—it is a moral necessity for justice, accountability, and public confidence.

³⁴ Law Comm'n of India, 178th Report, Rpt. No.178 on Recommendations for Amending Various Enactments - Both Civil and Criminal (2001).

³⁵ Law Comm'n of India, 198th Report, Rpt. No.198 on Witness Identity Protection and Witness Protection Programmes (2006).

³⁶ Bilkis Bano v. State of Gujarat, (2019) 14 SCC 615 (India)

**THE LEGAL CONCEPT OF HOSTILE WITNESSES AND THEIR EVIDENTIARY
VALUE:**

Legally speaking, there is no mention of the term "hostile witness" in any Indian legislation. Judicial construction—primarily under Section 154 of the Indian Evidence Act, 1872³⁷—has defined its parameters instead. A hostile witness is a witness who provides adverse testimony in court to the producing party and often contradicts his/her earlier recorded deposition under Section 161 of the Code of Criminal Procedure, 1973³⁸. According to law, the producing party has the right to request an order to cross-examine the said person as if he/she were a rival party's witness by seeking the leave of the court. However, this procedural flexibility does not negate the real-world consequences of belligerency. The Supreme Court in cases like *Ramesh Prasad Misra v. State of U.P.* (2004)³⁹ has clarified that testimony produced by a hostile witness does not have to be rejected en bloc. The court may consider only those portions which it considers credible and consistent with other evidence placed on record. This utilitarian approach, while technically right, points out the damage already brought about on the trial. It is not just a question of procedural strictness but the irrevocable damage to the prosecution's opportunity to spin a unifying scenario of things. When early witnesses, typically the only direct link between the accused and crime, withdraw their testimony, the court is in a position of circumstantial evidence that is more vulnerable to challenge and less persuasive in cases requiring proof beyond a reasonable doubt. The value of a hostile witness at the test is, in the process, extremely questionable, and dependence upon such fractured testimony places undue burden on the trial court to distinguish truth from falsehood with no structural back-up or protective cover.

³⁷ *The Indian Evidence Act, No. 1 of 1872, § 154 (India).*

³⁸ *The Code of Criminal Procedure, No. 2 of 1974, § 161 (India).*

³⁹ *Ramesh Prasad Misra v. State of U.P., (2004) 9 SCC 372 (India).*

STRUCTURAL CAUSES BEHIND WITNESS HOSTILITY: A LEGAL AND INSTITUTIONAL DIAGNOSIS:

Indian witnesses become hostile because the reasons behind it are beyond the court. The first of these is the absence of a legally mandated and well-enforced witness protection mechanism. The 14th⁴⁰, 154th⁴¹, and 178th⁴² Law Commission Reports of India have all lamented the vulnerability of witnesses and suggested statutory safeguards. But in the absence of a dedicated Witness Protection Act, the vast majority of witnesses remain exposed to open threats and bribery by the accused or their agents. High-profile crimes such as the murder of Jessica Lal⁴³, the Best Bakery case⁴⁴, the murder of Nitish Katara⁴⁵, and the Sohrabuddin Sheikh encounter case⁴⁶ all show one recognizable pattern—chief witnesses withdrawing their depositions due to fear and as a consequence, delayed or denied justice. The judiciary has repeatedly decried this trend.

The second main reason is the exceedingly prolonged delays in the criminal trial process. Witnesses are required to attend court several times in a span of years, at their own cost, and loss of wages, risk of intimidation and harassment by adjournments repeatedly. Courts don't even possess minimum facilities like secure waiting rooms, and in most instances, the witness is forced to sit with the accused or members of his party, resulting in mental harassment and intimidation. Insufficiency of the state in the matter of money payment or logistical support under Section 312⁴⁷ of the CrPC aggravated the situation. Besides legal provisions of payment of travelling allowance and boarding, the witnesses are generally left without any assistance or reimbursement and, therefore, become easy prey to bribery and

⁴⁰ Law Comm'n of India, 14th Report: Reform of Judicial Administration (1958).

⁴¹ Law Comm'n of India, 154th Report: The Code of Criminal Procedure, 1973 (1996).

⁴² Law Comm'n of India, 178th Report: Recommendations for Amending Various Enactments, Chiefly the Code of Criminal Procedure, 1973 (2001).

⁴³ [Praveen Swami, Jessica Lal Murder Case: A Timeline, The Hindu](#) (Apr. 19, 2010)

⁴⁴ [Teesta Setalvad, Best Bakery Case and the Fight for Justice, Frontline](#) (Oct. 4–17, 2003)

⁴⁵ [Nitish Katara Murder Case: Timeline, The Times of India](#) (Oct. 3, 2014)

⁴⁶ [Sohrabuddin Sheikh Case: All Accused Acquitted, Indian Express](#) (Dec. 21, 2018)

⁴⁷ The Code of Criminal Procedure, No. 2 of 1974, § 312 (India).

manipulation. Finally, police insensitivity and poor coordination between the investigating agencies and courts guarantee that threats against witnesses go unreported as well as unpursued.

**WITNESS PROTECTION SCHEME, 2018: JUDICIAL INNOVATION,
LEGISLATIVE SILENCE:**

In *Mahender Chawla v. Union of India* (2018), the Supreme Court directed the launching of the Witness Protection Scheme, 2018 into law of the land under Article 141 until a suitable legislation is enacted. The scheme classifies the witnesses into three categories—A, B, and C—based on the sense of threat, and provides a range of protective measures like police protection, re-location, identity protection, in-camera trials, and audio-visual deposition as well. On paper, the scheme is integrated and prospective. But in reality, being non-statutory in character, it cannot be given effect legally against the states. Implementation is patchy, awareness among judicial officials is limited, and budgetary allocation for protection measures is limited. There is no independent agency or statute authority to oversee implementation of the scheme, and thus it is toothless against the whimsical actions of state governments. No penalty for non-compliance exists, and most courts have not incorporated the scheme into common procedural practice. Legally, the scheme is an administrative instruction rather than a codified right, which weakens its enforceability and contravenes the principle of equality before law under Article 14.

**COMPARATIVE LEGAL MODELS: LESSONS FROM GLOBAL
JURISDICTIONS:**

For developing an effective legislative model for witness protection in India, it is important to learn effective legal models from other jurisdictions. The United States operates the Witness Security Program (WITSEC) under the Organized Crime Control Act, 1970⁴⁸, by the U.S. Marshals Service. The program offers protection in

⁴⁸ Organized Crime Control Act of 1970, Pub. L. No. 91-452, 84 Stat. 922 (codified as amended in scattered sections of 18 U.S.C. & 21 U.S.C.).

the form of identity alteration, relocation, and economic support. In the case *United States v. Gigante* (1999)⁴⁹, remote testimony by means of closed-circuit television was allowed by way of the court for a protected witness, setting precedent for balancing fair trial rights and witness protection. The UK responded to *R v. Davies*⁵⁰ by enacting the Criminal Evidence (Witness Anonymity) Act, 2008⁵¹, which permits courts to make anonymity orders and accept pre-recorded or screen-shielded depositions to preserve witness anonymity in high-risk cases. Such legislative response represents a balance of the rights of the accused under Article 6⁵² of the ECHR with the public interest in criminal prosecution. In Canada, the Witness Protection Program Act, 1996⁵³ not only provides for physical relocation but also legal protections, financial assistance, and psychological counseling. The Canadian courts, in *R v. Levogiannis*⁵⁴, also upheld the use of screens to protect child witnesses from cross-examination. The Australia Witness Protection Act, 1994⁵⁵, allows video-link providing evidence and safe housing, such as in *R v. Tang* (2008)⁵⁶, where evidence was permitted to be taken remotely in a trafficking case. These structures in the law reveal the same pattern: statutory-based institutional protection, monitoring by independent bodies, and judicial process institutionalization of technology. They validate the assumption that witness protection must be not just a policy but an enacted right.

⁴⁹ *United States v. Gigante*, 166 F.3d 75 (2d Cir. 1999).

⁵⁰ *R v. Davies*, [2006] EWCA Crim 123 (Eng.).

⁵¹ Criminal Evidence (Witness Anonymity) Act 2008, c. 15 (UK).

⁵² Convention for the Protection of Human Rights and Fundamental Freedoms art. 6, Nov. 4, 1950, 213 U.N.T.S. 221.

⁵³ Witness Security Reform Act of 1984, Pub. L. No. 98-473, tit. II, ch. 9A, § 1201, 98 Stat. 1837, 2166 (codified as amended at 18 U.S.C. § 3521 (1996)).

⁵⁴ *R v. Levogiannis*, [1993] 4 S.C.R. 475 (Can.).

⁵⁵ Witness Protection Act 1994 (Cth) (Austl.).

⁵⁶ *R v. Tang*, [2008] HCA 39 (Austl.); 237 CLR 1.

**REIMAGINING WITNESS PROTECTION IN INDIA: LEGAL
RECOMMENDATIONS:**

Based on the comparative analysis and requirements of the Constitution, India must enact a Witness Protection Act immediately that enshrines the rights and guidelines needed to safeguard witnesses. Most significantly, the law must establish a National Witness Protection Authority independent of state governments and police authorities to assess threats, provide protection, and coordinate implementation. Second, the Act must provide provision for anonymous depositions, voice modification, and video-link evidence, particularly for sexual violence, terrorism, and organized crime cases. Third, statutory mandates on trial court jurisdiction to conduct in-camera proceedings against protected witnesses and note reasons for granting or rejecting protection applications. Fourth, the Act must have penal charges for intimidation, inducement, and coercion of witnesses as well as enhanced penalty for tampering with evidence under Sections 191-193 of the Indian Penal Code. Fifth, the Act must offer financial assistance in the shape of relocation expenses, loss-of-wage indemnity, and job placement for high-risk witnesses. Lastly, legislation must demand training of police, prosecutors, and judicial officers to recognize and react to threats against witnesses. Only a combination of legal enforceability, administrative assistance, and technological precautions can ensure that witnesses testify the truth without fear and justice is not hijacked to silence.

CONCLUSION:

What becomes clear through this analysis is that the problem of witness hostility isn't just a procedural bump; it's a manifestation of systemic vulnerabilities—lack of protection, social pressure, institutional delay, and at times, sheer fear. Notwithstanding the judiciary's continuous attempt to establish norms of subtle differentiation between untrustworthy and partially trustworthy testimony—witnessed in milestone judgments, the reality is that the law could only do so much where the societal and infrastructural measures are wanting. It is in this

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crossroads—of law and everyday reality—that the task becomes most urgent. A hostile witness does not merely make it difficult to adjudicate; they are often a missed chance for justice to find its natural conclusion. The Witness Protection Scheme, 2018, though a step forward, is yet to bite because it lacks statutory support. It is unevenly implemented, pending the discretion of local powers, and in practice, witnesses are still exposed to threats, intimidation, or bribes. Such vulnerability demoralizes the public and encourages those who desire to distort the system. Moreover, the *Bhartiya Sakshya Adhiniyam, 2023*, while being a modernization of the law of evidence, cannot serve the purpose for which it is enacted if the protection and empowerment of witnesses is not institutionally embedded in the legal process. In reality, the credibility of our justice system cannot be based on fractured voices or stifled truths. Witnesses need to feel courageous, not threatened, when entering a courtroom. The success of impartial trials in India will be determined by how courageously we fight this menace—not by simply admitting its presence, but by taking a vow of structural reform. Up until then, the courtroom will persist as an arena not only for fairness, but for fear, cooperation, and silence. In summary, combating the plague of hostile witnesses takes additional than legislative alterations—it takes a shift in principles, strong legal protection, and unshakable commitment to truth. Justice, after all, is not only about legislation; it is about protecting those who tell the truth from being punished for their bravery, but rewarded because of it.

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