

**TO STUDY THE JUDICIAL PERSPECTIVE ON THE ROLE OF WITNESSES AND
EXPERTS IN CRIMINAL LAW**

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ABSTRACT

The criminal justice system's ability to successfully operate mostly hinges on people's willingness to provide information and evidence without fear of coercion or inducement. The circumstances surrounding Indian witnesses are appalling. Witnesses in this nation are no longer inclined to come forward and provide evidence. Witness wavers in the face of the accused party's rage, pressure, and threats to his life and survival. When he discovers that the state is under no legal duty to provide him with security, the situation only gets worse. The foundation of any successful criminal investigation and prosecution is the witness. They must have faith in criminal justice systems in order to investigate and prosecute crimes, especially the more serious and complex ones. Witnesses must feel comfortable coming forward to support the prosecution and law enforcement. They must be guaranteed assistance and protection against threats and violence that criminal organizations might try to inflict upon them in an effort to deter or punish them for helping. It is essential for the legal system to be able to effectively safeguard witnesses in the fight against crime. For an equitable and efficient criminal justice system to function, governments must be able to adequately shield witnesses from threats, harassment, and retaliation. By pinpointing the primary causes of witnesses' reluctance to testify, this study will define effective witness protection precisely.

KEYWORD: Criminal Justice, Security, Witness, Legal System, Threats

1. INTRODUCTION

The Dharma Sutras, written in ancient India, discuss when and how witnesses should be questioned and put to the test. The legislators provide that in circumstances of disagreement, witnesses must testify to the truth. However, there was a clear line between crimes and the introduction of oral evidence in civil cases. They insisted on a high moral standard for a witness

in civil cases, as B. Guru Rajah Rao pointed out, and they forbade anyone from being selected from the streets or the courthouse grounds and forced to testify, as is sometimes the case in contemporary Indian courts.¹

In the old Hindu Law of Crimes, there were two types of evidence that were accepted as legitimate. The first type of proof was called "human" proof, which also included possession (bhukti), witnesses (sakshi), and documentation (lekhyas). The second category of evidence recognized by the law was Divine proof, which comprises five types of trials: the trial by fire (agni), the trial by water (udaka), the trial by poison (visha), the trial by balance (ghata), the trial by drinking water (kosa), and the trial by poisoning (divya).³ However, when one party presents a human proof and the other a divine proof, the human proof is accepted above the divine proof.

When it comes to oral testimony, the witness is regarded as the most crucial component. A third party with some knowledge of the disputed transaction is called a witness. According to Manu, a person becomes a witness when he has either heard or seen something. There are two types of witnesses: (1) Krita (selected); and (2) Akrita (haphazard). There are five different types of Krita witnesses and six types of Akrita witnesses. The first Likhita (someone brought specifically to attest a written item) is one of the Krita witnesses. He is referred to as a Likhita, or someone who can write his own name, if he signs. If not, he is referred to as Lekita (a marksman) or someone whose name is written by someone else. Smarita is someone who is asked to observe transactions and is reminded of them each time they happen. Yadhrichchagata (3) is a person who has casually arrived throughout the transaction. (4) Goodha Sakshi is the person who the plaintiff has requested to go into hiding and pay attention to what the opponent has to say. (5) Uttara Sakshi is a person called upon to comment on a contested transaction after having heard the statement of someone who is going to die or travel overseas. The village people, the judge, the king, and anyone with the authority to carry out any act are the four Akrita witnesses. (5) the individual the plaintiff deputed, and (6) family members on matters pertaining to the family. The assembly members and the court clerk are included in the role of judge.⁵ It is interesting to note that, in contrast to modern jurisprudence, which tends to expand the scope of oral testimony and leaves

¹ B. GURU RAJAH RAO, ANCIENT HINDU JUDICATURE 60 (Ganesh & Co, 1920).

the determination of credibility to the tribunals, all ancient legislation had a tendency to regulate the competency of witnesses by artificial rules of exclusion².

The ancient legislators prudently loosened these regulations on the testimony of witnesses to crimes, realizing that crimes could occur in remote areas and forests and that witnesses could only testify if they just so happened to be present, regardless of their credentials.

Ancient law givers placed considerable solemnity in the convening of courts and commanded that the courts be decked with flowers, statues, paintings, and idols of God in order to create a hospitable atmosphere for the witnesses to utter the truth—the whole truth and nothing but the truth. Judges were seated on tall cane benches and wore distinctive robes. On days with a full or new moon, the courts were convened in the morning and were closed. Witnesses were urged to proclaim the truth in the most solemn appeals to their deepest religious convictions after performing ablutions, making a quick sankalpa, and facing an auspicious direction. They were told to tell the truth or risk being guilty of all dehumanizing crimes.

Manu's strategy for questioning witnesses is an example of questioning in court with the parties present. This indicates that a commission examination of the witnesses was conducted as well. Hindu custom dictates that the court interrogated witnesses in a manner akin to civil law proceedings. They were instructed to pay great attention to the behavior and acts of the witnesses in the dock in order to assess their credibility.

Hindu texts claim that Lord Vishnu believed that a false witness might be identified by his changed appearance, his countenance changing color, and his speech straying from the topic at hand.

The opposition had the right to disclose any facts that could disqualify or discredit a witness in court. However, this had to be done while the witness was testifying. After that, the court would ask witnesses to address the objections. It was forbidden for the witnesses to disparage other witnesses.

² G. BUHLER, THE LAWS OF MANU 268 (Sri Satguru Publications, 2001).

It was mandated that the court's presiding officer examine witnesses in a tactful and convincing manner. If the witness receives severe treatment, he may get scared and lose the thread that connects his story to its logical conclusion. As a result, harsh penalties were implemented in Arthasastra for judges who intimidate, browbeat, or unfairly silence witnesses; mistreat; defame; ask inappropriate questions; cause needless delays; wear out parties; or assist witnesses by providing them with information. The witnesses were questioned once, and their response was taken as it would naturally occur. They cannot be given the same questions over and over again to elicit different answers at various times

It must have taken more than just the kind treatment that the witnesses appeared to get in the past to elicit the testimony of impartial witnesses. Nowadays, it is well acknowledged by many that a credible witness will often attempt to avoid testifying in court. To some extent, both the accused and the witnesses were shielded from coercion. For example, a witness could not be forced to make a statement that could implicate him, and staff or rods could not be used to gather evidence during a criminal investigation. By definition, a sakshi could only testify to what they had personally seen or heard. It was disheartening to see that, in their quest to ascertain the truth—which is the goal of all trials—that perjury motivated by piety is sometimes excused in some situations, despite grave pleas for witnesses to tell the truth.

2. STATEMENT OF THE PROBLEM

Another problem is the procedure of examination of witness. It must be changed. On the day of examination of witness, the cross examination must be taken on the same day. The prolong process of cross examination discourage them to become witnesses. Due to this reason, in various cases where after the statement of the witnesses have recorded against the accused and the alleged criminals that these very criminals have gone ahead and abducted/Killed the witnesses. Therefore, in that cases the evidentiary value of the statements made in the first place would be nit if and only if, there were no cross examination done. Therefore, in order to upgrade our legal system, the abovementioned amendments would benefit the role of witnesses in the court.

3. OBJECTIVES OF THE STUDY

1. To access the helplessness of the courts to decide where there is an unnecessary delay in collecting of evidence and completion of investigation.
2. To examine that how science entered into the field of law to deliver Justice. To find out the role of witnesses in criminal trial.

4. RESEARCH METHODOLOGY

The methodology will be used in the present research work will basically be intended to be comprehensive. In the context of research methodology opted for this research study, the basic object of research will to arrive at certain conclusion and suggestions on the basis of the study and it will be possible by getting material which will informative on the basis of proper understanding of the relevant document in the subject of “Criminal trial vis-a-vis role of witnesses and experts: An Analytical study. Analytical method⁷⁷ and Critical method⁷⁸ will be adopted and applied to examine all the relevant aspects and applied to examine the relevant aspect and relevant problem of role of witnesses. The study will be based on the studies primary as well as secondary source of information. The primary sources will be taken in the form of legislations and questionnaire. Secondary sources will available and will be. In the form of judgments, journals, periodicals, magazines and articles. While studying the functioning of subordinate judiciary, the researcher explored the journals and definitions given by different justice, jurists, and academicians in order to project clear picture on the subject.

Sources of data collection

- **Primary Sources**

The empirical study will be in the form of primary data i.e. by observation, by survey, through questionnaires, through schedules.

- **Secondary Sources**

The doctrinaire study will be in the form of secondary data or material collected from various material collected from various sources like books, dictionaries, encyclopedia, Journals, websites, newspaper and Judicial pronouncement of India as well as foreign court.

5. RESULTS AND DISCUSSION

5.1 JUDICIAL PERSPECTIVE ON THE ROLE OF WITNESSES AND EXPERTS IN CRIMINAL LAW

A witness who contradicts themselves on multiple occasions shows a complete disregard for the truth. It is necessary to study and evaluate all of his evidence in order to determine how much weight should be given to it. When considering the testimony of a witness of this type, the court ought to proceed cautiously and typically seek confirmation of the witness's testimony³. In a criminal trial, the prosecution always bears the burden of proof; it must establish its case beyond a reasonable doubt. Without any legitimate, substantial proof, the accused cannot possibly be found guilty because the evidence is a crucial component of the criminal process. Despite the gravity of the accusations made against the defendant. It is the proof that serves as the foundation for the criminal court's decision and is essential to the criminal justice system. Rather than case law and precedents, the decision is based on the facts and the evidence. It is not the number of witnesses but the caliber of the evidence that has to be investigated.

5.2 Evidentiary Value Of Child Witness

There is no legal provision that states that the testimony of a minor witness cannot be believed. With the possible exception of the risk of being instructed by interested elders to provide a colored version, which they desire, it is exactly like any other witness. It is important to carefully weigh the likelihood of such hazard against the characteristics of being readily accommodative, influential tutors, and capable of imparting that version through their memory and ability to replicate the testimony of such witnesses. The evidence has greater sanctity than that of the elders after that danger—which just serves as a warning to the court—is eliminated due to the innocence, tender age, ineptitude, malice, and ensuing concoctions of the parties. When there is only one child witness and there is a high chance of infirmities and outside coaching, the need for caution and discretion increases. There are no grounds at all for rejecting the evidence if it is supported by additional sources and shows none of these flaws, presuming that tutoring is the only alternative.

³ *State of Rajasthan v. Bhawani*, 2003(3) RCR (Criminal) 875 (SC).

In Radhey Shyam Capt. V. State of U.P⁴

A youngster is not an incompetent witness, the court said, and their testimony may not necessarily need to be excluded. Every witness, including children, should be taken into account by the court at the appropriate stage of the trial court's questioning. They are typically thought to be more likely to instruct. When kids hear something repeated from their elders, they start to imagine it and take it for truth. Their naive minds are like blank canvases that can hold whatever that is repeatedly communicated over them. However, that does not imply that they are memoryless. Children's memories are also better, and unless something is done to erase it, they rarely forget what they see, especially when they are injured. It's not always the case that what people say is the product of imagination; occasionally, it can also be the outcome of others' imaginations, and in order for that to happen, someone else must cast that imagination. The court's ongoing responsibility is to resolve the issues raised by the evidence and handle them in accordance with the law. As a result, the testimony of a minor witness needs to be carefully considered.

In Bhurabhai Jinabhi Chauhan V. State of Gujrat⁵

Because children are often influenced by what they hear from others and because they are ideal targets for tutoring, the testimony of a kid witness needs to be assessed more cautiously and thoroughly. The legal system has established that child witnesses' testimony must get sufficient confirmation before it can be trusted. It is not so much a law as it is a guideline of common sense. In this instance, the evidence in the file demonstrates that the child witness was able to comprehend both the question and the required severity of the response, as well as her understanding and reappreciation of the situation. Furthermore, the statements she made in her deposition are supported by the testimony of other witnesses. Therefore, when the child is grown enough to grasp the question and answer and is in a position to answer with full comprehension and also knows the repercussions of false statements made by her. They are supported by the testimonies of additional witnesses who have applied practical wisdom. It wouldn't be appropriate to discount or reject the young witness's testimony. It may not be necessary to

⁴ (1994)1 D.M.C 260(ALL).

⁵ 2009 Cri LJ (NOC) 888 (Guj).

conclude that the youngster witnessing the event was receiving tutoring only because he was asked to describe what he saw and how it happened. He was simply testifying in accordance with the instruction, not in accordance with what he truly observed.

The High Court ruled in *State of H.P. V. Paras Ram*⁶ that the trial court's ruling, which is being challenged, should not have divided the child's evidence; rather, it should have been considered as a whole. When a youngster testifies, a margin for error must be allowed for their natural tendency to exaggerate, envision, or even dream the truth of life. On the basis of disparities, the testimony of further witnesses was disregarded.

5.3 Evidentiary Value Of Eye Witness

Arjun Singh & others v. State of Rajasthan.⁷ It was decided that just because eyewitnesses are related to the deceased, their testimony should not be disregarded. According to the court, these eyewitnesses' testimony shouldn't be disregarded for no reason at all. The deceased is connected to the witnesses. The court decided that because of their closeness, their testimony needed to be carefully considered. If they are coherent and there are no contradictions, then the testimonies are accepted.

In State of M.P. v. Mohabbat & Ors.⁸

The fact that the eyewitnesses are family members does not mean that their testimony can be discounted. When someone is accused of being interested, such interest must be proven. The evidence is persuasive and reliable and cannot be disregarded based only on the claim that, as a deceased person's kin, they are likely to falsely implicate the accused.

In State of Bihar v. Kartik Malhar,⁹

The incident may have happened at a time or location when it was unlikely that any further eyewitnesses could have witnessed it, hence the court will not insist on confirmation by any additional witnesses. The court does in fact place more weight on quality than quantity when it

⁶ 1998 (3) Crimes 312 (H.P.).

⁷ 2011(4) RCR (Cr) 270.

⁸ 2009 Cri LJ; *Shyam Babu V. State of U.P.* 2012(4) RCR (Cri) 963 (SC).

⁹ 1995 Cri LJ 899; (1995) 4 Crimes 516.

comes to evidence. The way the lone witness behaves and how straightforward his statement is are important elements that can be relied upon in order to convict.¹⁰

In Ram Naik¹¹ Surendra Pratap Chauhan

The Supreme Court ruled that even if there was tension between the accused and the complaint, which resulted in groupism, the eyewitness testimony could not be disregarded and should instead be carefully examined to prevent any unintentional implications. The Supreme Court noted that small embellishments are a natural feature of variance, and as such, their presence need not make eyewitness testimony implausible. Human reaction cannot be categorized into any one pattern or consistent rule, hence it is pointless and tedious to ignore data just because a person's response does not fit the predetermined mold.

5.4 Evidentiary Value Of Related Witness

If a connected witness's testimony is reliable, it can be trusted. A witness's relationship alone does not exclude them. Family members of the victim are just as qualified as any other witness to testify about the facts. The evidence must be thoroughly examined and evaluated in order to determine if the accused should be found guilty.¹²

"Witnesses examined are close relatives," according to Section 302 Sec. 3 of the Indian Evidence Act in *Ranjhe Khan versus State of Punjab*¹³. The accused killed his wife and buried her corpse in the cemetery. Where the dead body was originally buried, the witness stood by silently. They later learned that the victim's death was the result of foul play. The evidence was accepted after they swore in order to present the facts. The Court decided that even if some of the prosecution's witnesses were close relatives of the deceased, there was still no reason to doubt their credibility. Then, the sentence and conviction were upheld.

In **Bhajan Singh @ Harbhajan Singh V. State of Haryana**,¹⁴ "No neighbor, even if he had witnessed the incident, would like to come forward and depose against the assailants where two

¹⁰ Bachhitar Singh V. State of Punjab, AIR 2002 SC 3473:(2002) 8 SCC 125

¹¹ AIR 2001 SC 164.

¹² 2011(4) RCR (Cri) 355.

¹³ 2015(1) RCR (Cr) 715 (P&H) (DB).

¹⁴ 2011(3) RCR (Cr) 641 (SC).

person had been killed and one had been seriously injured without having any substantial cause." If a connected witness's testimony is credible, it can be trusted. The evidence is thoroughly examined and evaluated prior to determining whether the accused is found guilty.

It was decided in *Mookkiah v. State*¹⁵ that a witness' testimony could not be disregarded just because he or she provided it. The court has an obligation to carefully consider the testimony of such witnesses and compare them with other supporting evidence.

"Every eyewitness is consistent about the prosecution case as regards assaults on the deceased and setting of the houses on fire," according to *Subal Ghora v. State of West Bengal*¹⁶. The fact that they are related to the deceased does not invalidate their testimony.

The court can reasonably rely on a connected witness's statement as long as it is reliable, accurate, and properly supported by other prosecution evidence, according to *Sahubuddin V. State of Assam*¹⁷.

In the case of *Nand Kumar v. State of Chhattisgarh*,¹⁸ the Hon'ble Court held that witnesses who are closely related to the victims are not expected to describe the incident in graphic detail or with such precision as to identify which member and in what manner he participated in the commission of the offence. This is because witnesses who participate in the commission of an offence with deadly weapons and attack one or more people with the intention of killing them. It is necessary to evaluate their evidence in its whole.

6. CONCLUSION

The eyes and ears of justice are witnesses. A witness is a someone who has firsthand knowledge of the events and their occurring. The state of the Indian witnesses, however, is extremely concerning. Due to fear of political pressure, retaliation, fury, and threats on their lives and the lives of their families, witnesses are no longer prepared to come forward and provide testimony against the accused party. Undoubtedly, the main reason for a protracted trial delay is when

¹⁵ (2013) 2 SCC 89; (2013) 1 SCC (Cri) 848; AIR 2013 SC 321; (2013) 122 AIC 196.

¹⁶ 2013 (4) JI 527; 2013 (6) Recent Apex Judgment (R.A.J.) 311.

¹⁷ 2012 (12) SCALE 241; 2013 (1) Cri C.C.710; 2013 Cri LJ 1252; 2013 (1) RCR (Criminal) 817.

¹⁸ 2014 (4) RCR (Cr) 895(SC).

witnesses fail to show up or become hostile. Due to their role for locating evidence that will help the criminal justice system carry out its mission, experts are an essential component of the system.

Giving or procuring evidence is the process of using those things that are either presumed to be true or which were proven by evidence, to demonstrate an assertion of truth; however, the statements made by the witnesses help the court frame the facts and circumstances of the case in such a way as to form a chain of events and depose, before the investigating agency, giving sufficient evidence, on the basis of which the accused can be ascertained with the quality not in a quantity. It is further concluded that Section 3 of the Evidence Act, includes everything that is used to determine that assertion.

Every single incriminating event needs to be amply supported by solid and convincing proof. The facts thus demonstrated must establish a sequence of events from which the accused's guilt can only be inferred with certainty; no other theory may be entertained in opposition to the accused. Real or actual witnesses are becoming less common in court these days, which has actually led to an increase in the number of cases that are still outstanding in India. The testimony of witnesses should be gathered in court as soon as possible to prevent memory loss. The most unsettling aspect of high-profile cases is when witnesses become hostile, allowing the perpetrators to walk freely outside and threaten the victims and their families. Protracted chief examination, cross-examination, and re-examination procedures subject witnesses to numerous risks in addition to harassment, endangering and decreasing the likelihood of genuine testimony.

By fixing the culpability of crime on the offenders through the use of scientifically proven and verified evidence, the incorporation of forensic science in investigations has increased the likelihood that justice will be served. The implementation of these procedural laws to administer justice has advanced significantly with the advent of forensic science tools like DNA analysis, Lie detectors, Narco analysis, Polygraphs, etc. As a result, using the newest tools and procedures, which may be necessary at this moment, methodical scientific techniques have made it easier to detect the crime.

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