

# Hostile Witness: Legal Issues and Judicial Approach A Critical Analysis Under the Bharatiya Sakshya Adhiniyam, 2023

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**Abstract:** *The administration of justice in any legal system depends significantly upon the credibility of witnesses. In the Indian criminal justice system, however, the recurring phenomenon of witnesses turning hostile has emerged as a major impediment to fair adjudication. A hostile witness, broadly understood as one who resiles from a previous statement or adopts an adversarial stance against the party calling him, often weakens the evidentiary structure of a case. This article undertakes a detailed examination of the legal framework governing hostile witnesses in India, with particular reference to the Indian Evidence Act, 1872, and the interpretative role played by the judiciary. It further analyses the reasons that compel witnesses to turn hostile, evaluates the evidentiary value of such testimony, and reflects upon the judicial strategies adopted to balance fairness and truth. The study also considers the need for systemic reforms, especially in the context of witness protection and procedural efficiency.*

**Keywords:** *justice*

## I. INTRODUCTION

The credibility of witness testimony lies at the heart of the adversarial system of justice. Courts rely heavily on oral evidence to reconstruct events and determine the guilt or innocence of an accused person. In theory, a witness is expected to present facts truthfully and without prejudice. In practice, however, the situation is often far more complex. One of the persistent challenges faced by courts in India is the tendency of witnesses to turn hostile. This issue is not merely procedural; it has far-reaching implications for the integrity of the justice system. When a witness deviates from a prior statement or deliberately suppresses the truth, the prosecution's case may collapse, resulting in acquittals even in serious criminal matters.

The increasing frequency of such occurrences has drawn attention from courts, scholars, and policymakers alike. It raises fundamental questions about the reliability of the system, the safety of witnesses, and the effectiveness of legal safeguards. This paper seeks to examine these concerns in depth by analysing both the legal framework and judicial responses to hostile witnesses.

### Concept and Nature of a Hostile Witness

Although the term "hostile witness" is widely used in legal discourse, it does not find an explicit definition in statutory law. Its meaning has instead evolved through judicial interpretation and practical application.

A witness is generally considered hostile when he exhibits an unwillingness to tell the truth at the instance of the party who has called him. This may manifest in several ways: contradiction of earlier statements, evasive answers, or overt alignment with the opposing party.



It is important to distinguish between a witness who is merely unfavourable and one who is hostile. A witness may fail to support a party's case without being intentionally deceptive. Hostility implies a degree of adverseness or bias that justifies allowing the calling party to cross-examine its own witness.

The determination of hostility is thus a matter of judicial discretion. Courts assess the conduct, demeanor, and consistency of the witness before granting permission for cross-examination under the relevant provisions of law.

### **Statutory Framework under the Indian Evidence Act, 1872**

The legal position relating to hostile witnesses in India is primarily governed by the Indian Evidence Act, 1872. While the Act does not define the term, it provides mechanisms to address situations where a witness deviates from expected testimony.

#### **Section 154: Power to Permit Cross-Examination**

Section 154 empowers the court to allow the party calling a witness to put questions that may be asked in cross-examination. This provision is central to dealing with hostile witnesses. It recognizes that a party should not be bound by the adverse testimony of its own witness.

The exercise of this power is discretionary. Courts typically require some indication that the witness is not desirous of telling the truth or is acting in a manner contrary to prior statements. Once permission is granted, the party may confront the witness with leading questions and prior inconsistent statements.

#### **Section 145: Cross-Examination on Previous Statements**

This section becomes relevant when a witness contradicts earlier statements made in writing. It allows the cross-examiner to draw attention to specific portions of such statements and question the witness regarding inconsistencies.

#### **Section 155: Impeaching the Credit of a Witness**

Section 155 provides for various methods of discrediting a witness, including proof of prior inconsistent statements. In the context of hostile witnesses, this provision plays a supporting role by enabling the party to challenge the reliability of the witness.

### **Judicial Approach to Hostile Witnesses**

Indian courts have, over time, developed a pragmatic and balanced approach to dealing with hostile witnesses. Rather than adopting a rigid stance, the judiciary has focused on preserving the integrity of the trial while ensuring that justice is not defeated.

### **Admissibility and Evidentiary Value**

A key principle established by judicial decisions is that the testimony of a hostile witness is not to be rejected in its entirety. Courts have consistently held that such evidence remains admissible, though its weight may be affected.

The rationale behind this approach is straightforward. A witness may not be entirely untruthful merely because he has deviated from earlier statements. Certain portions of his testimony may still be reliable and corroborated by other evidence.

### **Selective Acceptance of Testimony**

Indian courts do not strictly apply the doctrine of "falsus in uno, falsus in omnibus" (false in one thing, false in everything). Instead, they adopt a more nuanced approach, separating the credible parts of testimony from those that are unreliable.

This principle allows courts to rely on portions of a hostile witness's evidence that are consistent with other facts on record. It ensures that justice is not compromised due to partial unreliability.



### **Important Judicial Pronouncements**

The jurisprudence on hostile witnesses has been shaped by several landmark decisions.

In *Sat Paul v. Delhi Administration*, the Supreme Court clarified that the evidence of a hostile witness does not become wholly inadmissible. The Court emphasized that the credibility of such evidence must be assessed in light of the entire record.

Similarly, in *State of U.P. v. Ramesh Prasad Misra*, the Court reiterated that the testimony of a hostile witness can be relied upon to the extent it supports the prosecution case. The decision reinforced the principle of selective acceptance.

In *Koli Lakhmanbhai Chanabhai v. State of Gujarat*, the Court observed that hostility does not render a witness completely unreliable. The focus should remain on corroboration and consistency with other evidence.

More recently, in *Ramesh Harijan v. State of Uttar Pradesh*, the Supreme Court emphasized the need for careful scrutiny of hostile testimony rather than outright rejection.

### **Factors Contributing to Witness Hostility**

The reasons behind witnesses turning hostile are complex and multifaceted. They often reflect deeper structural and societal issues within the legal system.

### **Fear and Intimidation**

One of the most significant factors is the fear of retaliation. Witnesses may face threats from the accused or their associates, particularly in cases involving serious offences. In the absence of adequate protection, many choose to retract their statements.

### **Lack of Institutional Support**

Historically, India lacked a comprehensive witness protection mechanism. Without assurance of safety, witnesses are left vulnerable to external pressures.

### **Delay in Judicial Proceedings**

The slow pace of trials contributes significantly to the problem. Over time, witnesses may lose interest, forget details, or become susceptible to influence.

### **Inducement and Corruption**

In some instances, witnesses may be bribed or otherwise induced to alter their testimony. This undermines the integrity of the process.

### **Social and Cultural Pressures**

In closely-knit communities, social relationships and local dynamics may discourage witnesses from testifying against the accused.

### **Impact on the Criminal Justice System**

The phenomenon of hostile witnesses has serious implications for the functioning of the justice system.

Firstly, it weakens the prosecution's case, often resulting in acquittals. This is particularly concerning in cases involving grave offences, where justice for victims is compromised.

Secondly, it erodes public confidence in the legal system. When offenders escape punishment due to unreliable testimony, the credibility of the judiciary is called into question.

Thirdly, it leads to inefficiency and delays, as courts are required to spend additional time evaluating inconsistent evidence.



### **Witness Protection and Reform Measures**

Recognizing the gravity of the issue, efforts have been made to address the underlying causes of witness hostility.

The Witness Protection Scheme, 2018, represents a significant step forward. It provides measures such as identity protection, relocation, and police security. Although still evolving, the scheme has the potential to enhance witness confidence.

Technological advancements also offer promising solutions. Recording statements through video conferencing and ensuring secure documentation can reduce the risk of tampering and intimidation.

Additionally, the establishment of fast-track courts can help minimize delays, thereby reducing opportunities for witnesses to be influenced.

### **Comparative Perspective**

A brief comparison with other jurisdictions highlights alternative approaches. In countries such as the United States and the United Kingdom, witness protection programs are more robust and well-established. Strict penalties for perjury and witness tampering further deter hostile behavior.

While the legal systems differ, certain best practices can be adapted to the Indian context, particularly in relation to protection mechanisms and procedural efficiency.

### **Critical Evaluation**

The current judicial approach strikes a balance between flexibility and fairness. By allowing selective reliance on hostile testimony, courts ensure that justice is not defeated by technicalities.

However, this approach is not without limitations. It places a significant burden on judges to distinguish between truthful and unreliable portions of evidence. In the absence of corroboration, such determinations may become difficult.

Ultimately, the issue cannot be resolved solely through evidentiary rules. It requires a broader reform of the criminal justice system, addressing factors such as delay, protection, and accountability.

## **II. CONCLUSION**

The problem of hostile witnesses remains a pressing challenge in the Indian legal system. While statutory provisions and judicial interpretations provide mechanisms to address the issue, they do not fully eliminate its root causes.

A comprehensive approach is necessary—one that combines legal reform, institutional support, and societal awareness. Strengthening witness protection, expediting trials, and ensuring accountability are essential steps in this direction.

The judiciary has played a commendable role in evolving a balanced approach, but lasting change will depend on systemic improvements. Ensuring the reliability of witness testimony is not merely a procedural requirement; it is fundamental to the pursuit of justice.

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