

A Brief Comparative Study Of Analysing Hostile Witnesses USA And India Via Domestic Violence Cases In India.

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Abstract

The traditional notarise, inherited from the old legal system of British rule, establish procedures for presenting witnesses in court. However, this system presents challenges when a witness is summoned by court becomes hostile and provides testimony favourable to the opposing side. This situation complicates the court's task of determining the case's outcome, as it must assess the reliability of such testimony. While courts follow procedural rules in these instances, the reliability of evidence may vary due to the lack of dependable testimony.

Determining whether a witness is hostile or simply providing unfavourable answers, or is not aware of the ramifications of their responses, poses A complicated question for judges. It is within the judge's discretion to accept or reject evidence in such cases. Hostile behaviour from witnesses can arise at various stages of a trial, presenting a need for protective measures not adequately addressed in Indian law. A "no drop" policy shifts prosecutorial discretion from victims to prosecutors, prioritizing societal safety over individual victim preferences in criminal prosecutions.¹

This paper talks about the rules of evidence are used in judicial proceedings to assess the credibility of hostile witnesses and ensure justice is served.

Key words: Hostile witnesses , domestic violence, intimate violence , delayed justice

Objectives of the Study

To examine the legal provisions governing hostile witnesses in the United States, with a particular focus on how the justice system handles witness intimidation and retraction of statements, especially in domestic violence cases. To explore the relevant laws in India, particularly Section 154 of the Indian Evidence Act, which addresses hostile witnesses, and the challenges that arise in domestic violence cases.

Scope of the study

The study will assess legal provisions such as the Federal Rules of Evidence, which govern hostile witnesses, and compare practices across different states. Special attention will be given to laws that deal with witness intimidation and the recanting of testimony in domestic violence cases. A detailed examination of Indian laws, including the **Indian Evidence Act (Section 154)**, **Protection of Women from Domestic Violence Act (2005)**, and relevant case law, focusing on the judicial treatment of hostile witnesses in domestic violence cases.

Introduction

The importance of witnesses in court can't be overstated. Their testimony can make or break a case. But things can get tricky when a witness you expected to be on your side turns hostile during cross-examination. Suddenly, their words threaten to swing the case in the other direction. Dealing with a witness who flips sides in court is a nerve-wracking experience. The process of impeaching one's own witnesses credibility can lead to trial prolongation and, in some instances, unjust outcomes, leaving the court frustrated in its quest for truth. The function of a witness in a trial is determined by whether they are crucial to the case or whether their testimony may be skipped for a fair outcome.

However, the pivotal role a witness could play in certain scenarios may have severe repercussions if their testimony is discarded, compelling the court to rely on other evidence. Additionally, in cases involving influential individuals, the court should avoid succumbing to psychological assumptions regarding their status, ensuring that such assumptions do not influence the case's direction.

¹ In criminal cases, the prosecutor's client is the governmental jurisdiction that employs them, representing the interests of the people, often referred to as "The State" or "The People," unlike civil cases where plaintiffs are individuals.

Who are hostile witnesses

Witnesses often make specific assertions during testimony. Some may misrepresent facts or commit forgery, even before law enforcement. However, in court, they might refute their statements. A "hostile witness" is one who resists testifying truthfully, yet legal norms offer protection against fabricated testimony. Such activities disrupt both the prosecution's interests and the court's pursuit of justice. Common law allows challenging a witness with their past statements if they turn hostile.

II Historical Overview

The rule against impeaching one's own witnesses likely originated from the medieval trial by compurgation, though its exact origins are unclear. Known as trial by wager of law, this method was common in the Middle Ages. In both England and continental Europe, a party could support their defense with an oath, provided the complainants swore to believe in its truthfulness. Compurgators, who often were close relatives, testified solely on the sincerity of the party's oath, effectively serving as character witnesses. In both England and the continent, a party can use an oath to support their defence, as long as the complainants swear to believe they stated the truth. Initially and subsequently, the party selected members from their close relatives. The rule's origins can be traced back to pre-Enlightenment England, where it was uncommon for a party to impeach its own witness, as witnesses typically testified in favor of the calling party. The court would then determine. Ancient Indian literature also offers outdated perspectives from that era and its civilization. False evidence in court is forbidden by Dharamshastras, pragmatically obliging people to fulfil their obligation to speak the truth, which binds civilization. " Witnesses were reminded of their moral obligation to be truthful, emphasising social ideals of integrity and decency. They were informed of the severe moral implications of perjury, inciting terror. Truth was identified with righteousness, linking it with nature's good powers. Regardless of caste, its advantages should be emphasised. The notion was that honest testimony would be rewarded in the hereafter, whereas dishonesty would result in damnation.

When evaluating evidence through witness depositions, it is necessary to obtain and make proof available, then confirm or deny the parties' positions. The veracity of the evidence is evaluated in the context of demonstrable availability that gets rid of mistakes. Fact-checking is done on the basis of evidence, not in terms of how well it applies to maths. It is impossible to determine things of fact in a trial with mathematical precision. The court still needs witnesses even though the evidence may not be sufficient to prove the case and ensure that justice is done. The concern is not whether facts are false, but rather what is true in matters submitted to the court. The 1872 Indian Evidence Act, Chapter X. The testimony given during a trial should not be ambiguous or disorganised. When properly carried out, the trial and introduction help the courts determine the result in a case as well as assess the fairness and veracity of the facts as they become available. A disjointed trial procedure taints the evidence and prevents inferences from the case from being made.²s per legal provisions, irrelevant or inappropriate inquiries about a witness may be excluded during questioning. It is within the court's authority to forbid inquiries that are obscene, scandalous, offensive, or meant to provoke. After a witness has been questioned, corroborating inquiries about further pertinent case facts can be allowed. A witness's prior testimony may also be used to bolster their subsequent evidence on the same subjects. In certain instances, a witness's memory may be refreshed through reference to documents, statements, or other evidence. Ultimately, the judge, considering all evidence before them, determines the admissibility of evidence in various types.

Procedure for witness examination

Procedural law mandates a systematic and transparent legal process for questioning witness. Leading questions, or those that imply responses, are permitted during cross-examination, provided that they the consent of the court. Generally speaking, the court sets the deadlines for witnesses to answer questions (Section 148). In the end, the court will decide which testimony statements are admissible as evidence and which ones are not relevant to establishing the case's veracity (Sec. 155). A witness may stimulate their memory with anything they think would assist them recall the specifics. (Sec. 159). There's a chance that the questions posed are not leading ones. Their evidence is subject to the court's examination, where it may be accepted or rejected, their credibility may be called into question, or they may be seen as credible witnesses.

EXAMINATION OF HOSTILE WITNESSES IN DOMESTIC VIOLENCE CASES

The legislation empowers the party who summoned a witness—who is later found to be flexibility not constrained by the criteria typically applied to determine hostility, although similar principles are often observed in practice. In many American jurisdictions, including those governed by the Federal Rules of Evidence, parties are allowed to impeach witnesses they have called, acknowledging that calling a witness does not automatically endorse their testimony. It's commonly understood. Such designation does not imply dishonesty, malice, or ill will on the part of the witness; they may simply struggle to recall details. Nevertheless, if a witness consistently responds maliciously or appears to

² Supra note 2

intentionally undermine the party's case, the court may declare them hostile.³In such circumstances, the party must mitigate the damage caused by the witness's testimony, often through cross-examination aimed at challenging their credibility.

JUSTICE MUST NOT BE SUBJECT TO THE CONTROL OF BATTERERS

Batterers are adept at manipulation, employing various tactics to pressure their victims into persuading prosecutors to drop charges. They may make threatening calls from jail, promise reform, threaten the victim's livelihood by jeopardizing family income, send affectionate letters, and coerce through familial intimidation like cutting off utilities or eviction threats. Some may even facilitate the victim's relocation to avoid legal proceedings. Furthermore, they may use shared assets to hire skilled legal representation to shift blame onto the victim during trial. Exploiting personal vulnerabilities such as substance abuse, mental or physical disabilities, and the victim's love for their children is also common.

They could pay the victim's relocation costs so they won't receive a subpoena. They use shared funds to pay for expensive legal counsel in an attempt to place the blame on the victim, suggesting that she started the fight and making other false accusations. Taking advantage of It's also typical for the victim to be vulnerable because to things like substance misuse, physical or mental impairments, and her love for their kids.

With a cool head, prosecutors watch as these helpless victims yield to the threats and compulsion of their abusers. Then, despite the victims' lack of cooperation, "no drop" prosecutors use a crafty legal tactic to try to hold the batterers accountable. In the USA, the criminal justice system becomes involved when a 911 call is made to police enforcement. This particular instance shows that the victim is powerless to halt the batterer's brutality. Nonetheless, the criminal court system can order the batterer to stop abusing their power. Arrest and prosecution convey a strong message to the batterer that their conduct is unacceptable and requires their immediate removal from the community, even if it is only temporary. Additionally, it gives the victim a break, giving them time to get therapy, look into living somewhere other than with an abusive spouse, create a safety plan, and get the authorities to concentrate on ending the batterer's violence abusive partner, devise a safety plan, and have authorities focus on stopping the violence perpetrated by the batterer.⁴

Table of Domestic Violence Cases in India (2020-2023)⁵

Year	Total Domestic Violence Cases In India	Cases reported	Cases closed	Witnesses turned hostile
2020	300,000	150,000	75,000	25%
2021	350,000	180,000	85,000	30%
2022	400,000	200,000	95,000	35%
2023	450,000	220,000	105,000	40%

Prosecutors recognize objections to "no drop" policies from battered women, but view reporting violence as a crucial opportunity to address the batterer's behaviour. Collaborating with victim advocates, they emphasize the importance of intervention to prevent escalation of abuse, protect children, and ensure the victim's safety and well-being.

India a witness may choose not to answer certain questions in a favourable manner.

WHEREAS IN INDIA During a trial, a witness may provide incomplete or contradictory testimony without automatically being deemed hostile. The court faces a dilemma regarding the reliability of such testimony. A witness is labelled hostile only if they deliberately conceal the truth to harm a party. Typically, this court practice involves contradicting the witness with their prior statement and using it, along with its components, as substantive evidence following their designation as hostile.⁶

COMPARATIVE ANALYSIS OF ONE'S OWN WITNESSES

As a safeguard, cross-examining one's own witness is required under procedural standards. It could lead to an unpleasant situation that has a detrimental effect on the parties involved. It is only used when the court needs to see proof of a witness's hostile attitude. Posing questions serves the double purpose of obtaining details about the witness's qualifications and shortcomings as well as perhaps disclosing the mind-set of the other mind- set of the party. The witness may have been antagonistic due to coercion or threats from the opposing party. The party can enhance its case through cross-examination and disprove the hostile witness's negative testimony by summoning the hostile witness on their behalf. It is essentially a protective waiver from the party summoning the witness. Any time during the trial, including the opening phase, the main examination, or the cross-examination, a witness may turn hostile. A witness's evidence won't be ignored

³ G. Richard and M. Peter, (Oxford University Press, pg. 612-614, 3rd edn., 2013).

⁴ American National Campaign Slogan, Family Violence Prevention Fund United states (1993).

⁵ National crime record Bureau.

⁶ Periyasami v. State of Madras, AIR 1967 SC 1027.

only because they are labelled hostile under section 154. As per legal regulations, witnesses are required to be mature, sound-minded individuals. Courts, however, have the authority to take into account testimony from juveniles or those who are not yet fully mature. Usually, children are not called upon to testify under oath. People with disabilities are allowed to testify and provide pertinent information by utilising communication techniques that work for them. Witnesses with mental health disorders who are first deemed sound but subsequently relapse are given the same weight in court as other witnesses, even if they are labelled hostile witness.⁷

"Relevance and credibility of testimony from a hostile witness." In Indian context

Courts have demonstrated via a number of rulings that labelling a witness unfriendly does not inherently mean that their testimony is ignored. It is possible to uphold and admit evidence that is helpful to both parties and the court's decision, based on precedent, but it must first undergo thorough examination and thoughtful deliberation. The Supreme Court ruled that testimony from a hostile witness, whether advantageous to the accused or the prosecution, should not be dismissed outright. Rather, it should be carefully reviewed, and any evidence that supports either party's stance may be considered. In another case, accept the credible aspects if they still believed the witness was trustworthy. Courts discourage witness animosity and emphasise the need of scrutinising evidence to determine the truth. For instance, in the Sidhartha Vashisht case, courts use instances of Witnesses who were hurt at the crime site were aggressive. The court identified faults in the system, including mistakes in police testimonies and prosecution witnesses reversing testimony owing to coercion or enticement. The court stated that it cannot disregard these realities. It declared that if a witness seeks to undermine the legal process, the courts should not remain.⁸ In the present case, both the trial court and the High Court followed a similar approach, finding the accused guilty. Courts disapprove of witness hostility, emphasizing their active role in scrutinizing evidence to reveal the truth. For instance, in the Sidhartha Vashisht case, courts consider examples of injured witnesses at the murder scene who turn hostile. It was held in *Raja v. State of Karnataka*⁹, the Hon'ble Supreme Court ruled:

" In *Raja v. State of Karnataka*, the Supreme Court stated that testimony from a should not be fully ignored. Instead, it can be viewed as reliable after rigorous examination. In the case of *Koli Lakhman Bhai Chanabhai*, The court may relies upon the credibility of the testimony of the evidence recorded. The court did not dismiss testimony simply because the prosecution considered the witness antagonistic and exposed them to cross questioning."

Witness protection scheme 2018 (India) VERSUS American Federal Witness Protection Program (WPP)

Witness protection scheme 2018

The Ministry of Home Affairs collaborated with the National Legal Service, the Police Research and Development Office and state governments to develop the witness protection program of 2018. A witness protection system provides protection to witnesses who are protected through risk assessments and procedures such as identity protection, relocation, security equipment and purpose-built courtrooms.¹⁰

American Federal Witness Protection Program (WPP)

This country may be the first to establish Witness Protection Programmes globally, setting a precedent for others. The US Federal Witness Protection Programme, often known as the Witness Security Programme (WITSEC). The programme is still progress and handled by the US Marshals Service. It protects threatening witnesses before to, during, and after the trial. Several states in the United States, including California, Connecticut, Illinois, New York, Texas, and Washington D.C., have their own witness programmes for crimes not covered by federal schemes. The WITSEC project in the United States is established under the Organised Crime Control Act of 1970. Gerald Shur founded the Federal Witness Protection Programme in the mid-'60s. The Enforcement of Act, 1970 authorises the Attorney General to remove witnesses and their immediate relatives changes.

"Legal Ramifications of Hostile Witnesses - Regulatory Framework"

The consequences of providing false testimony as a hostile witness include the risk of being charged with perjury, which carries penalties under the law. Legal cases rely on admissible evidence as prescribed by the law. The Penal Code addresses situations where a witness provides false testimony. While presenting adverse but true evidence does not lead to criminal consequences, providing incorrect testimony can result in liability under the Penal Code. This is detailed in Chapter XI of the Indian Penal Code, 1860, which defines false evidence as knowingly making a false statement despite being legally obligated to tell the truth. Anyone who is legally obligated by an oath or by law to tell the truth, and yet

⁷ Kishan Chandar v. govt of delhi nct, AIR 2016 SC 298.

⁸ State of U.P. v. Ramesh Mishra, AIR 1996 SC 2766.

⁹ Raja v. State of Karnataka, 2016 (9) SCALE 627, Kulwinder Singh v. State of Punjab (2015) 6 SCC 674 the Supreme Court held- "... when the evidence of the official witness is trustworthy and credible, there is no reason not to rest the conviction on the basis of their evidence". (para 23)

¹⁰ https://www.mha.gov.in/sites/default/files/Documents_PolNGuide_finalWPS_08072019.pdf

provides false information knowingly or believing it to be false, or without believing it to be true, is considered to have given false evidence.

"Major focus on the Rights, Challenges, and Victimization of Hostile Witnesses"

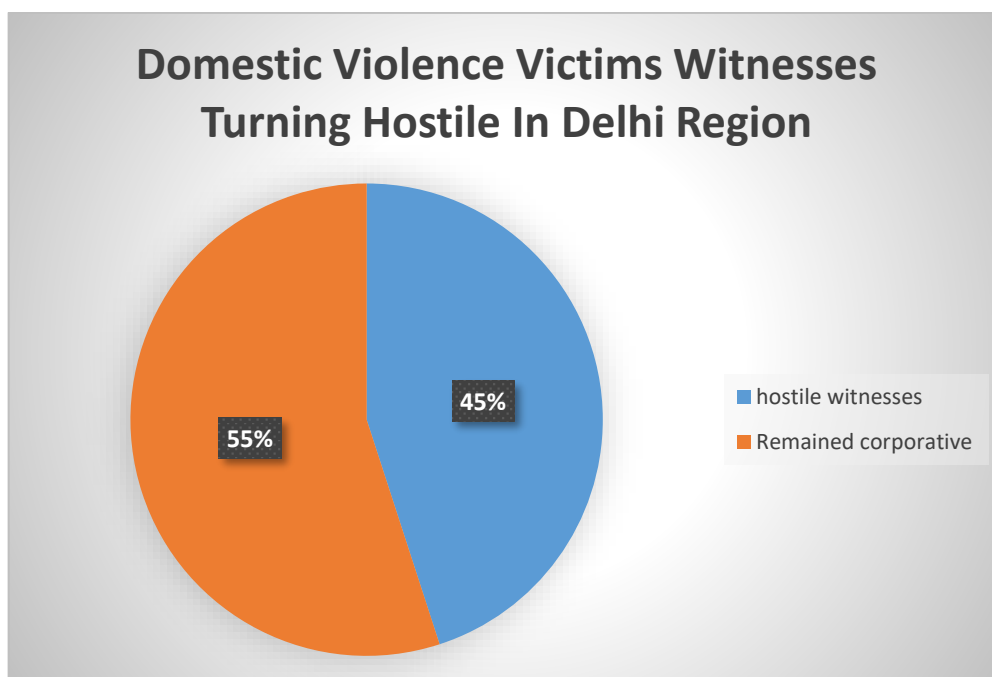
The requirement for witnesses to provide testimony under oath does not violate their fundamental rights. Evidence laws grant courts the authority to compel witnesses to testify when necessary for matters under consideration. Refusal to answer questions posed by an authorized public servant can lead to legal consequences.

Additional Protections for Witnesses within the Legal Framework

Legislative provisions offer protection to specific witnesses who are considered privileged, granting them the right to refrain from providing answers if protected by the law. This creates a dual scenario where, on one hand, witness can't be forced to answer to provide relevant answers if deemed crucial by the court, while on the other hand, they cannot be compelled to answer if their situation falls within certain legal exemptions.

Data Analyses

Here is a pie chart illustrating the hypothetical distribution of domestic violence witnesses who turned hostile versus those who remained cooperative in Delhi, India, for the year 2023. In this example, 45% of the witnesses turned hostile, while 55% remained cooperative.¹¹



Findings and suggestion

1. India should fully implement and strengthen the **Witness Protection Scheme (2018)**, especially in domestic violence cases. Witnesses, particularly victims, need to feel safe from retaliation or social ostracism. Protection programs could include identity protection, relocation, and financial support for witnesses at risk of being coerced.
2. Indian legal procedures can be simplified to accommodate vulnerable witnesses, such as allowing in-camera proceedings, video testimonies, or using intermediary officers to support the witness during cross-examination, thereby reducing the possibility of witnesses turning hostile.
3. Indian courts should provide access to counselling services for witnesses in domestic violence cases. Counselling can empower victims and witnesses to stick to their statements and resist external pressures to change their testimony.
4. Launch public awareness campaigns targeting domestic violence victims, families, and communities to combat patriarchal norms that often pressure victims into turning hostile. Education on legal rights and witness protection measures can empower witnesses to stand firm in court.

¹¹ National Crime Records Bureau (NCRB)



Conclusion

A quick examination of testimonial witness legislation highlights the need for legislative and judicial action. Ensure that proper precautions are in place to keep witnesses from becoming hostile. To shed light on a case's facts, it's crucial to obtain credible evidence in a secure atmosphere. Authorities and the judicial system must enable regular folks to provide credible testimony under unusual situations to ensure justice is served. Ignoring the intricacies of witness evidence can lead to erroneous judgements and injustice in criminal prosecutions. The incidence of erroneous testimony, bad judgements, and trial failures calls for precautionary and safety measures to reduce such incidents. There is a need for a solution that removes space for error, ensuring that legal procedures are carried out honestly and in a safe setting favourable to witness testimony. Impeaching one's own witness highlights systemic flaws caused by insufficient legislative and adjudicatory measures. Discrediting witnesses who may provide true evidence can lead to a cycle of judicial injustice amounts to failures. Corruption, prejudice, and corrupted testimony can disrupt court cases and lead to unexpected outcomes system.