

**DE JURE NEXUS LAW JOURNAL**

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2<sup>nd</sup> Year, BBA LL.B.**EYEWITNESS TESTIMONY – CREDIBILITY AND RELIABILITY -  
A JUDICIAL APPROACH****ABSTRACT**

*Anecdotal Evidence has been around in legal proceedings since the earliest days of the courtroom. These were times when such evidence was given much significance and weight as it served as a quick and easy method to provide an eyewitness account of the matter. The Ancient Romans had a highly developed legal system, complete with lawyers and Justices with complex practices not observed in contemporary civilizations. An evidence given by a person during the Roman Empire had to be free from any sort of coercion or bias<sup>1</sup>. Parents and children could not testify against one another, same was the deal for slaves and masters, and persons with rivalry against each other. A minimum of two people were required to testify as to the same fact in order to verify its authenticity and regard it as true. Such complex systems were inculcated for a reason. Eyewitness Testimony is not always reliable or credible from a judicial approach. Justice has to be delivered to everyone, despite the hurdles created by bias and prejudice in the minds of people. It has always been a common practice to make false witnesses testify or induce people into giving a false testimony in court. “You shall speak the truth and nothing but the truth.” is a common oath that a witness has to undertake before speaking their mind, but it also has to be taken into consideration whether they actually have the intention to do the same. Much of this issue can also be looked at from a psychological point of view, where the Human brain, not able to perceive and remember crucial details correctly, might*

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<sup>1</sup> Witness, Encyclopedia Britannica 1911 (29<sup>th</sup> September, 2018), Time visited – 14:05 (23<sup>rd</sup> of July, 2021), <https://theodora.com/encyclopedia/w/witness.html>,

*end up costing an innocent their liberty. Thus, it is important that we analyse testimony by an Eyewitness for its merits and demerits and try to find solutions to rectify the issue of false testimonies.*

## **RELIABILITY – A PSYCHOLOGICAL VIEW**

The Human brain might be the most complex organic system to ever exist. It has the power and capability to induce chemical reactions in such a way that it affects the very way each individual thinks. What we see, what we hear, always has a big impact ultimately on what we perceive. But most of the time, cognitive memory functions of the brain act more according to convenience rather than practicality. It looks for patterns that make the most sense, according to the personality and past experiences of the individual<sup>2</sup>. Racial Disparities, for example, might induce a person to actually identify an innocent as the perpetrator instead of the real offender. The mind in this case, acts on past experiences but denies practicality. There are many factors that might make the testimony of an eyewitness flawed. These are solely because of the complex psychological situations these people find themselves in. For example –

### **1) STRESS –**

Sometimes, people find themselves being unwilling spectators to gruesome occurrences. Mental shock and trauma are quite common in people who have witnessed murders, acts of terrorism, or arson. Post Traumatic Stress Disorder is a serious issue faced by these people. It tends to make people vulnerable to thoughts and memories which are even remotely related to the traumatic event that they witnessed. During these stressful events, the brain, under stress, starts to release a chemical known as Cortisol<sup>3</sup>, which gives the viewer an impression of looking through a tunnel, i.e, Tunnel Vision. During this process, the brain picks up only the most vivid of details which the eyes see. The small and crucial details are left out. Subsequently, much of this stored information quickly starts to fade away, leaving holes and gaps here and there, ready to be contaminated by talking to other people, including media persons, lawyers or prosecutors. The mind fills in the gaps to complete the theory, using the most convenient way possible. This is why cross-examination of witnesses is of utmost importance in both criminal and civil cases. A witness might be truly talking about what they saw, but only because they did not know any better.

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<sup>2</sup> Vanderbilt University, The Brain Doesn't Like Visual Gaps And Fills Them In, ScienceDaily (August 27<sup>th</sup>, 2007), Time Visited – 23<sup>rd</sup> of July, 2021, <https://www.citationmachine.net/bluebook-law-review/cite-a-website/confirm>

<sup>3</sup>Dr. Samuel Mcleod, Eyewitness testimony, Simply Psychology (2018), Time Visited – 23<sup>rd</sup> of July, 2021, <https://www.simplypsychology.org/eyewitness-testimony.html>

**2) SUGGESTIVE IDENTIFICATION –**

Policemen often use this method to assist people in identifying perpetrators, but it might end up having an opposite effect in many cases. A landmark case in the United States explains this situation clearly. In *Manson v. Braithwaite*<sup>4</sup>, An undercover police officer allegedly purchased drugs from the appellant at his apartment complex. The deal took place in a well-lit hallway and the officer had a good view of the dealer's face. Later on, the undercover officer explained the characteristics of the dealer to another officer, who presented a sole photograph of the appellant to him. The undercover officer, Glover, quickly recognized him as the dealer and he was charged, prosecuted and convicted upon that very photograph as evidence. The Supreme Court of the United States struck down his conviction and held that the sole photograph being entered into evidence was unnecessary and suggestive. This type of fallacy is also reflected by the practice of 'Identification Parades' by Police authorities<sup>5</sup>. In this procedure, suspects of an offence are lined up beside each other and an eyewitness is asked to observe each one of them in order to find the perpetrator. This is a flawed method as it does not even delve into the idea that the witness might not even had a good view. It does not take the degree of observation into account. Such practices might lead to an undesirable outcome of innocents serving time in jails.

**3) WEAPON FOCUS –**

Cases of crimes involving weapons are the most vulnerable to this type of fallacy. Often witnesses' sole attention is locked on the weapons that were used by assailants. This is because the weapon is perceived as an immediate danger or presence of threat which could cause bodily injury or death. Witnesses might even end up giving a more detailed testimony about the weapon rather than the assailants themselves. The difference lies in the people viewing objects as predictable or unpredictable. This was an experiment done by psychologist Elizabeth Loftus. In this experiment<sup>6</sup>, people were asked to view slides of a customer holding a cashier on gunpoint and another of a customer holding a cheque in hand. While assessing the reliability of the memory and feedbacks of these people, it was found that the group who saw the customer with a gun, had poorer memory and recollection of the important details such as surrounding circumstances, etc. Whereas the opposite was observed in the 2<sup>nd</sup> case where the gun was replaced with a cheque. This experiment supported the contention of Weapon Focus in determining Eyewitness reliability.

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<sup>4</sup> 432 U.S. 98 (1977)

<sup>5</sup> Sarvesh Shahi. Rules and Principles of Identification under criminal justice system, SCCOnline (August 20<sup>th</sup> 2020), <https://www.sconline.com/blog/?p=234322>

<sup>6</sup> Elizabeth Loftus, Some facts about "weapon focus" Law and Human Behaviour, Time visited – 23<sup>rd</sup> July, 2021, <https://link.springer.com/article/10.1007/BF01044839>

Credible information is always expected from an eyewitness. This is also required by law in India as per Section 193 of the Indian Penal Code which prescribes a punishment of imprisonment for a maximum of 7 years along with a fine, for giving false testimonies at any stage of a judicial proceeding. Nevertheless, such practices have not been deterred. It is still common to fabricate evidence and plant false witnesses in order to get an edge over the opposite party in a case, be it criminal or civil. The Indian Supreme Court has held in the case of Mahila Vinod Kumari vs. State of Madhya Pradesh<sup>7</sup>, that –

*“The evil of perjury has assumed alarming proportions in cases depending on oral evidence and in order to deal with the menace effectively, it is desirable for the courts to use the provision more effectively and frequently than it is presently done.”*

A popular movement in the United States named ‘The Innocence Project’, started by a non-profit legal defense organisation has till date freed about 375 convicted inmates, many of whom were on death row, awaiting execution. This was mostly done through DNA Testing which holds much more evidentiary value than eyewitness testimony. In fact, in 69%<sup>8</sup> of these wrongful convictions, the primary cause was false testimony by eyewitnesses, the highest of all the factors involved. This further drives home the point that the credibility of eyewitnesses is not credible in most cases. False eyewitness account is an even more grave issue when considered from a judicial point of view. It would constitute as the worst miscarriage of Justice if a person falsely implicated by a dubious eyewitness testimony is executed or is incarcerated for long periods of time. The onus therefore lies on the judicial system to allow for swift cross examinations in order to prove that the eyewitness is really speaking the truth. One of the innocents freed by the Innocence Project named Randall Adams served almost 12 years for a murder he did not commit, based entirely on eyewitness account. Ironically, it was later found that the eyewitness himself was the murderer<sup>9</sup>. In a more unfortunate incident, An inmate who was executed for murder, was found innocent posthumously. Here too, the evidence was largely eyewitness account<sup>10</sup>. Thus, in order to avoid such occurrences, it is crucial that we do afford all the credibility and reliability to an eyewitness account.

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<sup>7</sup> SC NOS.8515-8516 OF 2008

<sup>8</sup> The Innocence Project, How false eyewitness misidentification can send innocent people to prison, Time Visited – 23<sup>rd</sup> July 2021, <https://innocenceproject.org/how-eyewitness-misidentification-can-send-innocent-people-to-prison/>

<sup>9</sup> Randall Adams, <https://files.deathpenaltyinfo.org/legacy/files/pdf/StudyCWC2001A.pdf>, Time visited – 23<sup>rd</sup> of July, 2021

<sup>10</sup> Four years after a man's execution, lawyers say DNA from the murder weapon points to someone else, The Washington Post (May 05, 2021), Time Visited – 23<sup>rd</sup> July 2021, <https://www.washingtonpost.com/crime-law/2021/05/04/ledell-lee-dna-execution/>

**CONCLUSION**

In conclusion, the issue of false testimonies and convictions resulting from unreliable eyewitness accounts are a menace that needs to be controlled if proper and swift justice is to be delivered to the people. From a broader perspective, such false incarcerations might lead to innocents becoming hardened criminals, if they weren't before. The purpose of imprisonment is to rehabilitate a convict, not an innocent. The mind of an innocent would perceive the harsh and cold environment of a prison in a less-than-ideal manner than a convict who knows that he actually committed a crime or a wrongful act. Therefore, in pursuance of true justice, attention should be given more towards scientific and forensic data rather than anecdotal evidence. The entire concept of anecdotal evidence arose out of the fact that we did not have much scientific progress in the olden days. Now, with advances in technology by leaps and bounds happening every day, it is crucial that the same advances are made in scrutinising an accused's guilt.