

DE JURE NEXUS LAW JOURNAL

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EFFECT OF HOSTILE WITNESSES ON THE ADMINISTRATION OF CRIMINAL JUSTICE SYSTEM IN INDIA: A CRITICAL APPROACH**INTRODUCTION**

Witnesses are the establishment of well-working criminal justice framework as they act as a basic guide to justice conveyance framework. They help the court in deciding the accused or in any case of the charged. In any case, the issue of witnesses turning malicious has become a threat as it is the primary driver of high quit pace of lawbreakers engaged with terrible violations like homicide, assault and so on and if no measures is taken to keep the observers from turning threatening at that point the general public will lose their confidence in justice conveyance framework and it will prompt tumultuous circumstances and to check this a successful observer security plot is required so as to ensure the observers from turning unfriendly. The nonappearance of witness security enactments has empowered the offenders to carry out wrongdoing courageously as they are not, at this point terrified of law. Along these lines, institution of witness insurance laws to keep the observers from turning unfriendly is a need of 60 minutes. In this paper, I have featured the issues of witnesses turning decisive and its impact on justice conveyance framework. It additionally examinations the significance of witnesses and competence of observers in criminal justice framework and spotlights on the need of successful enactment so as to check the aggression in witnesses, it also, proposes some common and easy measures to forestall aggression of witnesses.

Witness, the Past and its formation into the Criminal system

Witnesses take a huge role in the Criminal Justice System. Agreeing to Bentham, "Witnesses are eyes and ears of Justice", as each word said by them under the steady gaze of the Court of law, helps the Court to convey equity. In criminal justice framework, justice is impossible

without dynamic and legit cooperation of observers in criminal procedures. However Indian Legislature has not given a legitimate definition to the word 'witness' in any of the Indian Statute, neither Code of Criminal System, 1973 nor does Indian Evidence Act characterize the term 'Witness' in any of its arrangements. The word references importance of the term "Witness" is an individual who is available at some occasion and ready to give information about something or someone.

An observer is characterized as one who sees, knows or vouches for something or then again one who gives declaration, having sworn to tell the truth or attest face to face or by oral or composed testimony, or by affidavit. Hence from above, Witness might be characterized as an individual who knows about event of occasion and is equipped for giving depiction of such event under the watchful eye of the Court of Law and such explanation committed to by him having sworn to tell the truth is taken as a proof for any reason. Section 118 of the Indian Evidence Act, 1872 tells about the individual who may affirm.

Article 118 of the Indian Evidence Act conceives that all people will be qualified to affirm, except if the court thinks about that they are kept from understanding the inquiries put to them or from furnishing reasonable responses to these inquiries, due to their delicate years. At first sight, each individual is an observer. The Constitution of India perceives the idea of reasonable preliminary under Articles 14, 21, 22 and 39A. These Articles give insurance to citizens against discretionary and unreasonable procedures.

There is no uncertainty that a preliminary must be reasonable for the denounced, and yet it should likewise be reasonable for the survivor of wrongdoing. In this way, so as to have reasonable preliminary, it is fundamental that the observer should to have the option to give proof or then again offer expression with no allurements, instigation or danger from both of the gatherings to the preliminary.

Nonetheless, in the ongoing years, India has seen abrupt increment in the pace of witnesses turning threatening which has raised a worry about assurance of observers in criminal preliminaries. It is practical to take note of that, India has no powerful law for security of observer of violations, because of which numerous observers turned antagonistic during the preliminary, subsequently blocking the way that reach towards the end of justice. In Swaran Singh vs U.O.I case, while expounding on significance of Witnesses in criminal justice

framework, the Supreme Court said that "A criminal case is based on the structure of proof, proof that is allowable in law. For that, witnesses are required whether it is direct proof or incidental proof".¹

The Origin of the Hostile Witness

The term 'Hostile Witness' has not been characterized in any Indian laws be it Indian Evidence Act, 1872 or Court of Criminal Procedure, 1973 or some other law. Nonetheless, witnesses are named as 'Unfriendly' when they outfit an announcement before the police or other office equipped to record articulation, however, in general pull out from their explanation when they are called as an observer under the watchful eye of the court of law during the preliminary in legal procedures. Verifiably, the term 'Hostile Witness' shares its birthplace practically speaking law. It was first begat in the customary law to give insurance against the "Mischiefs of observers" who purposefully by outfitting bogus proof tampered the reason for party calling such individual as their observer. Such activity not just hampers the enthusiasm of the contesting party yet it additionally crushes the very article of legal framework that is to meet the end of justice. The "witness" which was given under the precedent-based law was that the observers were not permitted to offer any expression which repudiate their past explanation.

Such shield was started by announcing such observer as unfriendly observer, for this reason precedent-based law let down specific idiosyncrasies of antagonistic observer, for example, "not burning of coming clean at the case of the gathering calling him" or "the presence of a 'threatening amicus' to the gathering calling such witnesses. "

The proof of antagonistic observer remains allowable in preliminary and conviction should be possible upon the declaration of an antagonistic observer, on the off chance that it is certified by other dependable proof. In Bindu v. State (NCT) of Delhi, the Delhi High Court held: "The proof of antagonistic observer can't be dismissed in all and doesn't destroyed or cleaned out of

¹ Critical Analysis Of Laws Relating To Hostile Witnesses In India, IPLEADERS (2016), <https://blog.iplayers.in/critical-analysis-laws-relating-hostile-witnesses-india/> (last visited Oct 17, 2020).

the record. The declaration of such observer can be thought of and acknowledged by the Court to

the degree their form is discovered to be trustworthy on a cautious examination thereof. The part of the proof which is reliable with the instance of the arraignment or protection as recorded by the court can't be held to have washed off or inaccessible to the arraignment to demonstrate the blame off the denounced."

Article 164 of Code of Criminal Procedure, 1973 contains the arrangement identifying with recording of admission and proclamation by the justice. The announcement recorded under this area can be a meaningful proof and it can be utilized for confirming or negating the announcement of observer in the path. Article 1618 of Code of Criminal Procedure, 1973 engages the police office to analyse observers. During the preliminary, the observers are normal to rehash whatever he has said before the police during the examination.

In *Sat Pal v. Delhi Administration*, the High Court while explaining the idea of 'threatening observers' sees that:

"To stay away from contention over the significance of threatening observer, antagonistic observer, negative observer which had offered ascend to significant trouble and struggle of assessments, the creators of the Indian Evidence Act, 1872 appear to have consciously kept away from the utilization of any of those terms so that in India the award of consent to interview his own observer by party isn't contingent on the observer being announced unfavourable or antagonistic.

Regardless of whether the be the award of consent under Section 142 to put driving inquiries, or to have leave under Section 154 to pose inquiries which may be placed in interrogation by the unfavourable party, the Indian Evidence Act leaves the issue completely to the watchfulness of the court. The warning presented by Article 154 on the court is unfit and unencumbered, also, is separated from any inquiry of 'aggression'.

It is to be generously practiced at whatever point the court from witness's air, alter, disposition, bearing or the tenor and propensity of his answer or from a scrutiny of his past conflicting articulation or something else, thinks that the award of such consent is practical to extricate reality and to do equity. The award of such consent doesn't add up to a mediation by the court as to veracity of the observer. In this manner, in the request giving such consent it is desirable over evade the utilization of such articulation, for example, 'announced antagonistic', 'proclaimed negative', the essentialness of which is as yet not free from the recorded, spider

webs which, afterward bring a deceptive tradition of disarray and struggle that had so since quite a while ago vexed the English courts."

In *Gura Singh v. State of Rajasthan*, the High Court characterized 'threatening observer's as an individual "who isn't burning of coming clean at the example of one gathering calling him." Subsequently, its critical to take note of that an antagonistic observer is likewise called as unfavourable observer debilitates the instance of the group calling him.²

Impact of Problem of Witnesses Turning Hostile on Criminal Justice

System

In the ongoing years, India has seen an unexpected increment in pace of witnesses turning threatening which has raised an issue about assurance of observers in criminal preliminaries. It is practical to take note of that, India has no successful law for insurance of observer of wrongdoings, because of which numerous observers turned antagonistic during the preliminary, in this manner impeding the way that reach towards the finish of justice. In scandalous case like Jessica Lal, BMW case, Best Bakery case, because of absence of insurance of witnesses, numerous observers declined to show up under the watchful eye of the court for casualty and turned threatening which brought about vindication of people blamed for horrifying wrongdoings. In *Swaran Singh* case, while explaining on significance of Witnesses in criminal justice framework, the Incomparable saw that " A criminal case is based on the building of proof, proof that is acceptable in law. For that, witnesses are required whether it is immediate proof or conditional proof".

The observers are combined with obligation to help the court in finding reality however at the point when the observer turns unfriendly, this outcome in tumultuous circumstance in the public arena as the entire case of indictment can fall on a bogus proclamation of witnesses.

² Hostile Witnesses - a Menace to the Criminal Justice Administration, [WWW.LEGALSERVICEINDIA.COM](http://www.legalserviceindia.com), <http://www.legalserviceindia.com/article/1339-Hostile-Witnesses.html> (last visited Oct 17, 2020). Problem of Hostile Witnesses - Who is a hostile witness, [WWW.LEGALSERVICEINDIA.COM](http://www.legalserviceindia.com), http://www.legalserviceindia.com/articles/hostile_w.htm (last visited Oct 17, 2020).

Article 39 of Code of Criminal Procedure Act, 1973, cast an obligation upon people in general to give data about the commission of a specific wrongdoing to the police. The obligation closes at the point when the data has arrived at the police through that individual or in some different manners. Inability to agree to this arrangement will lead to discipline under Section 176 and 202 of I.P.C. What's more, outfitting bogus data is culpable under Section 177 of the Indian Penal Code. The obligation of the individual to educate the police emerges just on his monitoring the bonus of an offense determined in conditions (I) to (xii) referenced under Section 39. The aftereffect of outfitting bogus data will be that citizen begins to lose its confidence in the criminal justice framework which are intended to give equality to the person in question. However long the observer remains threatening and don't give honest proof in the court, casualties will consistently endure and individuals' confidence in viability and believability of legal framework will keep on being dissolved and broken.³

CONCLUSION

The issue of witness turning threatening is one of the serious issues in equity conveyance framework in India and one of the major reasons of it is assurance of observers during and after preliminary. Observers in the cases including prominent names are powerless to criminal terrorizing. This includes the utilization of muscle or money power by the hoodlums to drive the observers to withdraw from the announcement given by them against hoodlums during the preliminary. In the current situation, it is important to offer security to the observers, particularly in some instances of intolerable violations like Rape, murder and other Socio-monetary offenses and so forth yet lamentably, the greater part of the nations of the world including India doesn't have satisfactory laws identifying with treatment and insurance of witnesses.

³ It is time to rethink India's witness testimony process, HINDUSTAN TIMES (2019), <https://www.hindustantimes.com/analysis/it-is-time-to-rethink-india-s-witness-testimony-process/story-BgvzEGQNAAyjwsqw70Q8YL.html> (last visited Oct 17, 2020).

There is requirement for far reaching law for the insurance of witness. Without far reaching law, witnesses not just feel unstable yet in addition no cure is accessible to them for the injuries caused to them.⁴



⁴ S MURALIDHAN, RIGHTS OF VICTIMS IN THE INDIAN CRIMINAL JUSTICE SYSTEM TABLE OF CONTENT FORTHCOMING IN NATIONAL HUMAN RIGHTS COMMISSION JOURNAL (2004), <http://www.ielrc.org/content/a0402.pdf> (last visited Oct 17,