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Email: [editor@ijlae.com](mailto:editor@ijlae.com)

## UNDERSTANDING HOSTILE WITNESSES AND THEIR EVIDENCE IN LAW

***V. Krithi Sahithya,***  
***Amity University, Noida***

### **Abstract**

*The concept of a 'hostile witness' presents a formidable challenge within legal proceedings. This occurs when a witness, expected to provide favourable testimony, instead turns against the party who called them to testify. Courts face the complex task of determining the reliability of such witnesses, whose disposition is crucial for dispensing justice in a trial. This article analyses the difficulties courts face when dealing with hostile witnesses, the evolution of laws around examining such witnesses, and the probative value of their testimony. It also addresses the rights, problems, and victimization of hostile witnesses, along with the pressing need for stronger protection measures within the Indian legal system. The paper reflects on the rules of evidence, analyses the various situations involving hostile witnesses, and assesses the probative value of their testimony in meeting the ends of justice.<sup>1</sup>*

**Keywords:** Hostile witness, evidentiary value, witness testimony, impeachment, cross-examination, witness protection, India.

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<sup>1</sup> R. Abhinaya Krishna, "Abrogation of Law by Hostile Witnesses", 1.4 JCLJ 668 (2021).

## **Introduction**

Witnesses play a pivotal role in court trials. A favourable witness can significantly strengthen a case, but their testimony can be challenged during cross-examination by the adverse party. A difficult situation arises when a witness turns hostile, potentially altering the case's outcome and complicating the judicial process. Managing a hostile witness is challenging, as their credibility and the subsequent need for impeachment can prolong the trial and, in certain cases, lead to an unjust outcome. Courts may struggle to ascertain the truth, especially when a witness's reliability is questionable due to their change in stance.<sup>2</sup>

The impact of a witness's change in stance can have serious consequences, particularly when the court must rely on alternative evidence instead of their direct testimony. In cases involving influential individuals, the challenge is even more significant, as psychological biases related to the social status of the accused or the aggrieved parties can affect the trial. The judiciary must be vigilant in eliminating such biases to ensure that justice is served impartially. The issue of witnesses turning hostile has far-reaching implications for the criminal justice system. It not only jeopardizes individual cases but also perpetuates a culture of impunity, where offenders can escape accountability through coercion and intimidation. The absence of adequate witness protection mechanisms allows the accused to manipulate the legal system, further deterring individuals from testifying in cases where their safety is at risk.<sup>3</sup>

## **Evolution of Hostile Witness Law**

The concept of a 'hostile witness' is not explicitly defined in Indian law but has evolved through common law practices and is addressed within the framework of the Indian Evidence Act, 1872. The term refers to a witness who, after being called to testify, demonstrates a bias against the party who called them. This bias can manifest in various ways, such as providing testimony that contradicts their earlier statements or by displaying an unwillingness to cooperate with the party presenting them.<sup>4</sup>

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<sup>2</sup> R. Abhinaya Krishna, "Abrogation of Law by Hostile Witnesses", 1.4 JCLJ 668 (2021).

<sup>3</sup> Mahlawat, Dr. Shabnam. "Hostile Witnesses and Evidentiary Value of Their Testimony Under the Law of Evidence." *ILI Law Review* (2017).

<sup>4</sup> Shakeel ahmad, "Hostile Witness: Genesis to Protection Mechanism" 21 ALJ (2013-14) 123.

The rule against impeaching one's own witness has roots in the medieval practice of "trial by compurgation," where a party could establish their plea of defense by taking an oath, supported by others who swore they believed the party's oath was truthful. As trials evolved, the principle that a party could not discredit its own witness remained, based on the idea that a party vouches for the credibility of the witness they call. This principle posed challenges when witnesses turned hostile. Courts then developed mechanisms to address this issue, allowing parties to contradict hostile witnesses with prior statements and challenge their credibility. The antiquated rules of evidence, inherited from the British system, create an unstable scenario for courts and judges when witnesses called to support a case turn hostile. The difficulty lies in determining the case's outcome when a witness gives answers favourable to the opposing party, making it an onerous task for the courts to rely on such testimony.<sup>5</sup>

### **Common Law Development**

Under common law, a party was generally prohibited from impeaching its own witness. This was based on the rationale that by calling a witness, a party was representing that witness as credible. However, this rule created difficulties when a witness became adverse. To address this, courts developed exceptions, allowing a party to treat its own witness as hostile and cross-examine them, if the witness demonstrated hostility or adverse animus. The fine line between a witness who is genuinely hostile, one who merely provides unfavourable answers, or one who is unaware of the implications of their answers, is a complex question. Determining whether a witness is hostile is the judge's prerogative, influencing their decision to accept or reject the evidence. This issue arises when witnesses turn hostile during various stages of the trial, highlighting the need for protectionist measures that are often lacking in Indian law.<sup>6</sup>

### **Indian Evidence Act, 1872**

The Indian Evidence Act, 1872, while not defining "hostile witness," provides a framework for dealing with such situations. Section 154 of the Act allows the court to permit the party calling a witness to put any questions to them which might be put in cross-examination

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<sup>5</sup> Mahlawat, Dr. Shabnam. "Hostile Witnesses and Evidentiary Value of Their Testimony Under the Law of Evidence." *ILI Law Review* (2017).

<sup>6</sup> Shakeel ahmad, "Hostile Witness: Genesis to Protection Mechanism" 21 ALJ (2013-14) 123.

by the adverse party. This provision effectively allows a party to cross-examine its own witness, but only with the permission of the court, and when the court considers the witness to be hostile. The Act gives significant discretion to the judge to determine when a witness can be declared hostile. There is no explicit requirement under Indian law to formally declare a witness as hostile before invoking Section 154. The court's discretion is invoked when it determines that the witness's conduct is detrimental to their duty to provide truthful testimony. The absence of a clear definition of "hostile witness" in Indian law can lead to inconsistencies in its interpretation and application.<sup>7</sup>

### **Witnesses and Their Examination for Testimony**

Witnesses play a crucial role in determining the outcomes of cases in court trials. A favourable witness who provides positive testimony strengthens the case of the party presenting them. However, this testimony can be challenged by the adverse party during cross-examination. A tough situation arises when a favourable witness turns hostile, potentially changing the outcome of the case. Dealing with one's own witness when they turn against the party calling them becomes an onerous task. The credibility and the impeachment of credibility of such a witness can prolong the trial and may lead to an unjust outcome, leaving the court in a frustrating situation when trying to find the truth. The court faces a dilemma in such circumstances, needing to decide whether to rely on the witness's testimony, to what extent, and which parts of the testimony to accept.<sup>8</sup>

The decision often depends on whether the witness was a prime witness or one whose testimony can be dispensed with for a just and fair trial. If a prime witness turns hostile, the court must reconsider relying on their testimony and may need to depend more on circumstantial evidence. However, if the witness is not a prime witness, the court might conclude that their testimony can be dispensed with, and the court can look for other, more reliable evidence. The crucial role a witness plays in certain cases can have devastating effects if the court has to dispense with the testimony and rely on other evidence. In cases where the

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<sup>7</sup> Shakeel ahmad, "Hostile Witness: Genesis to Protection Mechanism" 21 ALJ (2013-14) 123.

<sup>8</sup> Mahlawat, Dr. Shabnam. "Hostile Witnesses and Evidentiary Value of Their Testimony Under the Law of Evidence." *ILI Law Review* (2017).

accused or the aggrieved parties are powerful citizens, the trial may be affected by psychological assumptions related to their standing, which the court should avoid.<sup>9</sup>

### **Examination of Witnesses - The Regulatory Framework**

The examination of witnesses is a critical part of the trial process. It involves several stages: examination-in-chief, cross-examination, and re-examination. The primary purpose of examination-in-chief is for the party calling the witness to elicit testimony that supports their case. Cross-examination, conducted by the adverse party, aims to test the witness's credibility, challenge their testimony, and uncover any inconsistencies or biases. Re-examination, conducted by the party who called the witness, allows them to clarify any points raised during cross-examination. These stages are crucial for ensuring a fair trial and enabling the court to assess the reliability and truthfulness of the evidence presented.<sup>10</sup>

### **Examination of Hostile Witnesses (Section 154)**

Section 154 of the Indian Evidence Act, 1872, deals specifically with the examination of hostile witnesses. It grants the court the discretion to permit the party calling a witness to put any questions to that witness which might be put in cross-examination by the adverse party. This provision allows a party to cross-examine its own witness when the court considers that witness to be hostile. The power under Section 154 is discretionary, and the court must exercise it judiciously, based on the witness's demeanour and testimony. The section does not define "hostile witness" but empowers the court to allow cross-examination when the witness's conduct indicates an adverse animus towards the party calling them.<sup>11</sup>

### **Probative Force of Testimony of a Hostile Witness**

The probative value of a hostile witness's testimony is a complex issue. Since the witness has deviated from their expected testimony, the court must carefully evaluate which parts of their evidence, if any, can be relied upon. The court may accept the parts of the

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<sup>9</sup> Shakeel ahmad, "Hostile Witness: Genesis to Protection Mechanism" 21 ALJ (2013-14) 123.

<sup>10</sup> R. Abhinaya Krishna, "Abrogation of Law by Hostile Witnesses", 1.4 JCLJ 668 (2021).

<sup>11</sup> Mahlawat, Dr. Shabnam. "Hostile Witnesses and Evidentiary Value of Their Testimony Under the Law of Evidence." *ILI Law Review* (2017).

testimony that support the case of the party calling the witness and reject the parts that favour the opposite party, or vice versa. The entire testimony of a hostile witness is not necessarily discredited. The court can sift through the evidence to determine the reliable portions. Several factors influence the probative value, including the consistency of the witness's statements, their credibility under cross-examination, and the existence of corroborating evidence.<sup>12</sup>

Indian courts have established guidelines for evaluating the testimony of hostile witnesses. The court has the discretion to accept those parts of the hostile witness's testimony which support the case of the party calling the witness and to reject the parts which are inconsistent with it. However, the court must exercise caution and carefully scrutinize the evidence to ensure that it relies only on the reliable portions of the testimony. The court may also consider any prior consistent statements made by the witness, which may enhance the credibility of the favourable parts of their testimony.<sup>13</sup>

### **Criminal Consequences of Hostile Witnesses - The Regulatory Framework**

Witnesses who provide false evidence or contradict their previous statements may face criminal charges, including perjury. The Indian Penal Code contains provisions to address false testimony, and the Code of Criminal Procedure provides mechanisms for initiating proceedings against those who provide false evidence. These provisions aim to deter witnesses from turning hostile and to ensure that they provide truthful testimony in court.

Section 191 of the Indian Penal Code, 1860, defines perjury as giving false evidence, while Section 193 prescribes the punishment for this offense. If a witness provides false evidence with the intent to deceive the court, they can be prosecuted under these sections. The court may also take action against a witness who makes contradictory statements, as this can undermine the integrity of the judicial process.<sup>14</sup>

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<sup>12</sup> R. Abhinaya Krishna, "Abrogation of Law by Hostile Witnesses", 1.4 JCLJ 668 (2021).

<sup>13</sup> Shakeel ahmad, "Hostile Witness: Genesis to Protection Mechanism" 21 ALJ (2013-14) 123.

<sup>14</sup> Shakeel ahmad, "Hostile Witness: Genesis to Protection Mechanism" 21 ALJ (2013-14) 123.

## **Rights, Problems, and Victimization of Hostile Witnesses**

Witnesses, in general, face numerous challenges within the Indian criminal justice system. They are often treated disrespectfully, made to wait for extended periods, and subjected to relentless cross-examination, leaving them in a vulnerable and helpless state. Many people prefer to avoid becoming witnesses rather than endure these difficulties. The problems faced by witnesses include:

- **Lack of protection:** Witnesses often lack adequate protection from intimidation and coercion, which may lead them to turn hostile.
- **Harassment and intimidation:** Witnesses may face harassment and intimidation from the accused, their associates, or even the police.
- **Inconvenience and expenses:** Witnesses may suffer inconvenience and incur expenses due to frequent court appearances and delays in the trial.
- **Fear of retaliation:** Witnesses may fear retaliation from the accused, particularly in cases involving powerful or influential individuals.

The victimization of witnesses is a serious issue that needs to be addressed. Witnesses who come forward to testify in court often do so at great personal risk. They may face threats, violence, and even death as a result of their testimony. The lack of adequate witness protection measures further exacerbates this problem and discourages people from coming forward to testify, thus undermining the justice system.<sup>15</sup>

## **Other Safeguards for Witnesses - The Regulatory Framework**

The Indian legal framework includes several provisions aimed at safeguarding the interests of witnesses. The Code of Criminal Procedure, 1973, contains provisions for recording witness statements, ensuring their attendance in court, and protecting them from harassment. The Indian Evidence Act, 1872, also includes provisions related to the examination of witnesses and their protection from certain types of questions.<sup>16</sup>

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<sup>15</sup> Shakeel ahmad, "Hostile Witness: Genesis to Protection Mechanism" 21 ALJ (2013-14) 123.

<sup>16</sup> Mahlawat, Dr. Shabnam. "Hostile Witnesses and Evidentiary Value of Their Testimony Under the Law of Evidence." *ILI Law Review* (2017).

Section 161 of the Code of Criminal Procedure (CrPC) deals with the examination of witnesses by the police during the investigation. It allows the police officer to record the statements of persons acquainted with the facts and circumstances of the case. Section 164 of the CrPC provides for recording confessions and statements before a Magistrate, which can be crucial evidence in a trial. Other provisions, such as Section 309 (power to postpone or adjourn proceedings) and Section 311 (power of court to examine any person as a witness), also have implications for witness protection and their role in the judicial process.

### **Landmark Case Laws**

Indian courts have, through various judgments, interpreted and applied the provisions related to hostile witnesses. These interpretations have helped clarify the circumstances under which a witness can be declared hostile and the extent to which their testimony can be relied upon. The Supreme Court has held that the object of Section 154 is to get the truth, and the Section does not require the witness to be declared hostile before the party calling the witness is allowed to cross-examine him.

The concept of hostile witness has been explained by the Supreme Court:

1. Sat Paul V. Delhi administration<sup>17</sup>

In this case, an officer was charged for bribery, as the inspector of the Anti-corruption Department laid a trap for him. After the transfer of money to the accused the department immediately raided the office of the accused. The prosecution evidence by the court as they were interested parties in the trap also, the two other independent witnesses from the side of prosecution made contradictory statements. The question regarding the credibility of the witnesses was aroused.

The court, in this case, held that a hostile witness is the one who is not desirous of telling the truth at the instance of the party who has called him whereas an unfavourable witness is one who instead of proving a particular fact, in turn, fails to prove such fact or proves an opposite fact.

2. R. K. Dey v. State of Orissa<sup>18</sup>

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<sup>17</sup> AIR 1976 SC 294.

<sup>18</sup> 1977 AIR 170.

In this case the court held that, If the witness is speaking the truth and his testimony goes against the interest of the party who has called him then he cannot be necessarily called hostile. A witness's main purpose is, to tell the truth and not to show allegiance to the one who has called him. Hence, an unfavourable witness cannot be declared as a hostile witness.

3. G.S. Bakshi v. State<sup>19</sup>

In this case the court held that the answers and the attitude of the witness are the major factors from which the hostility of the witness can be construed. Therefore, a witness is often deciphered as hostile when he shows hostility in his attitude towards the party who has called him or when he tries to conceal the truth by deliberately making statements which are contrary to what he stated earlier or is expected to prove. When a prosecution witness turns hostile by stating something which tends to be destructive of the prosecution case, then the prosecution is entitled to request the Court to treat such witness as hostile.

## **Conclusion**

The issue of hostile witnesses remains a critical challenge in the pursuit of justice. The absence of a specific legal definition and the reliance on judicial discretion can lead to inconsistencies in how such witnesses are treated. The impact of a witness turning hostile can be significant, potentially leading to unjust outcomes and eroding public trust in the legal system. A witness turning hostile poses a significant threat to the judicial system, potentially leading to the failure of a trial. The lack of adequate witness protection measures further exacerbates this issue, often resulting in witnesses being susceptible to external pressures. The problem of witnesses turning hostile is a complex one, with no easy solutions. However, there are several measures that can be taken to address this issue and to protect witnesses from intimidation and coercion.<sup>20</sup>

To address these challenges, there is a need for comprehensive legal reforms. These reforms should include:

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<sup>19</sup> AIR 1978 SC 569.

<sup>20</sup> R. Abhinaya Krishna, “Abrogation of Law by Hostile Witnesses”, 1.4 JCLJ 668 (2021).

- **A clear legal definition of a hostile witness:** This would provide greater clarity and consistency in its application.
- **Strengthened witness protection measures:** Implementing robust mechanisms to protect witnesses from intimidation and coercion.
- **Guidelines for evaluating hostile witness testimony:** Establishing clear principles for assessing the credibility and probative value of such testimony.
- **Strict enforcement of perjury laws:** Holding witnesses accountable for providing false evidence to deter them from turning hostile.
- **Witness sensitivity training for judges and prosecutors:** Educating legal professionals about the psychological factors that can cause witnesses to turn hostile.
- **Use of technology:** Utilizing video conferencing and other technologies to allow witnesses to testify remotely, reducing the need for them to appear in court in person.
- **Increased awareness of witness rights:** Ensuring that witnesses are aware of their rights and the protections available to them.

By implementing these reforms, the legal system can better address the challenges posed by hostile witnesses, ensure fair trials, and uphold the principles of justice. The need for a robust witness protection program cannot be overstated. Such a program should include measures to protect witnesses from intimidation and harassment, as well as to provide them with support and assistance throughout the trial process. In addition, there is a need for greater awareness of the problem of hostile witnesses and the impact it has on the justice system. This can be achieved through public education campaigns and training programs for law enforcement officials, prosecutors, and judges.<sup>21</sup>

The absence of a comprehensive witness protection law has been a major impediment to the effective functioning of the criminal justice system in India. The Supreme Court has repeatedly called for the enactment of such a law, recognizing the urgent need to protect witnesses from intimidation and coercion.<sup>22</sup> While some states have implemented witness protection schemes, there is no uniform central legislation, leading to inconsistencies and gaps in protection. The Law Commission of India has also made several recommendations for

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<sup>21</sup> R. Abhinaya Krishna, "Abrogation of Law by Hostile Witnesses", 1.4 JCLJ 668 (2021).

<sup>22</sup> Shakeel ahmad, "Hostile Witness: Genesis to Protection Mechanism" 21 ALJ (2013-14) 123.

witness protection, emphasizing the need for a legislative framework that ensures the safety and security of witnesses.<sup>23</sup>

The Indian judiciary has also played a significant role in addressing the issue of hostile witnesses and witness protection. In several landmark cases, the Supreme Court has highlighted the importance of witness testimony in criminal trials and the need to protect witnesses from threats and intimidation. The Court has also issued guidelines for dealing with hostile witnesses and for evaluating their testimony. These judicial pronouncements have helped to shape the legal framework around witness protection and have underscored the judiciary's commitment to ensuring fair trials and upholding the rule of law.<sup>24</sup>

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<sup>23</sup> Mahlawat, Dr. Shabnam. "Hostile Witnesses and Evidentiary Value of Their Testimony Under the Law of Evidence." *ILI Law Review* (2017).

<sup>24</sup> Mahlawat, Dr. Shabnam. "Hostile Witnesses and Evidentiary Value of Their Testimony Under the Law of Evidence." *ILI Law Review* (2017).