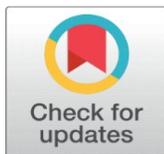


WITNESS RELIABILITY IN CRIMINAL TRIALS

Dr. Neeraj Malik¹✉

¹Assistant Professor, C. R. Law College, Jat Educational Society, Hisar



ABSTRACT

Indian courts accept and analyse witness testimony under the 1872 Evidence Act. Section 118-134 allows courts to hear several witnesses and preserve testimony. Under Section 154, courts can cross-examine opposing witnesses. Section 134 gives child witnesses special standing and needs no minimum number of witnesses to prove a fact. India's complicated justice system prioritises witness intimidation, protection, and fair trials for all. Indian law establishes truth and justice through eyewitness testimony. In India's criminal justice system, psychological, social, and environmental factors impact witness reliability. Human memory, misremembering, societal pressure, delayed testimony, and environment can impair witness credibility. Memory is imperfect and impacted by illumination, distance, and witness mental and physical state. Witnesses may lie or recant due to social pressure, therefore courts formed the Witness Protection Scheme, 2018. Delays and other factors can taint evidence and decrease witness recall. In India, hostile witnesses and perjury can impede criminal proceedings. The Indian testifying Act, 1872, covers hostile witnesses, whereas the IPC 191-193 covers perjury, which carries a seven-year jail sentence and a fine for court-related false testimony and three years for other cases. Active hostile witness and perjury management is essential to resolve these issues and maintain witness confidence in India's criminal justice system. The 2018 Indian Witness Protection Scheme safeguards witnesses and evidence in key cases. Witnesses in three danger categories get police protection, regular monitoring, temporary relocation, and identity changes. Protective state Witness Protection Funds are also created. Implementation is complicated by funding, agency collaboration, and law enforcement's protection. The Indian Supreme Court values trial witness comfort, respect, and cross-examination independence. Technology and law have boosted witness credibility, and COVID-19 has expanded trial video conferencing. The Law Commission of India endorses video conferencing and witness reliability devices. India may extend the Witness Protection Scheme, standardise video conferencing, teach judges, attorneys, and court workers, employ pre-recorded video evidence, improve witness tampering and perjury rules, and prepare witnesses.

Corresponding Author

Dr. Neeraj Malik,
jobsmalik14@gmail.com

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1. INTRODUCTION

Criminal justice and courtroom truth and justice depend on witness reliability. Indian courts employ witness testimony to judge guilt or innocence. The Indian testimony Act, 1872, and Code of Criminal Procedure, 1973, analyse, evaluate, and employ witness testimony in criminal cases.¹ Not all witnesses are trustworthy. Memory, perception, and recollection are faulty and sensitive to psychological and environmental factors that might influence a witness's evidence. India's unique socio-cultural framework, where social pressures, intimidation, and extended trials can dramatically affect a witness's desire or capacity to give true and consistent testimony, impairs witness testimony. The Indian judicial system recently acknowledged witness reliability issues. This understanding has led to legislative and procedural changes to strengthen witness credibility and rights. The 2018 Witness Protection Scheme and video conferencing for testimony demonstrate a growing awareness of difficult witness reliability concerns. In the evolving

¹ Susan Thomas S, 'Critical Analysis on the Evidentiary Value of Hostile Witness' [2022] SSRN Electronic Journal

Indian criminal justice system, witness credibility remains a fundamental legal issue. The effort to balance the accused's rights with the need for honest and trustworthy testimony while preserving witnesses' safety and dignity is ongoing. This introduction frames a deeper analysis of witness dependability, the legal framework governing witness testimony, and the improvements and processes being implemented to enhance witness accounts in Indian criminal trials.

2. LEGAL FRAMEWORK GOVERNING WITNESS TESTIMONY IN INDIA

In India, the 1872 Indian Evidence Act regulates witness testimony and court evidence acceptance and evaluation. This law and subsequent judicial interpretations control criminal trial witness testimony nationwide. The Indian Evidence Act covers witness competency and court evidence under sections 118-134². Section 118 stipulates that anybody can testify unless the court judges them incapable of understanding or delivering sensible responses owing to tender age, great old age, sickness (body or mind), or other factors. This wide approach lets judges hear from many witnesses while preserving testimony. Sections 119 and 120 improve witness competency for specific kinds. Section 119 allows dumb witnesses to testify in writing or signs if understood. This part reflects the law's effort to address physical constraints and allow essential testimony. Civil litigants and spouses are competent witnesses under Section 120.³ Certain Criminal Procedure Code conditions make the accused and their spouse qualified witnesses in criminal proceedings.

In criminal trials, hostile witnesses are significant. Section 154 of the Indian Evidence Act covers them. The court may allow a party to cross-examine its own witness. This provision is vital when a witness becomes hostile and contradicts their prior statements or the summoner. Indian courts have suffered from hostile witnesses, weakening cases. National attention was paid to adversarial witnesses in the 2004 Best Bakery case.⁴ In this landmark Supreme Court of India case, witness protection and legal intimidation were highlighted. The court stressed robust witness protection and free speech. The Supreme Court stated in the Best Bakery case that a fair trial is a constitutional and human right for the accused. Victim rights and public interest in justice were balanced by the court. This ruling outlined how courts should approach hostile witness circumstances, highlighting the need to go beyond the facts.

Antagonistic witnesses in Indian criminal proceedings have been scrutinised since the Best Bakery case. Courts now scrutinise why witnesses turn hostile and prioritise their earlier statements, especially if there is evidence of intimidation or coercion. Indian criminal justice's structural issues have been addressed by this judicial shift. Law gives some witnesses special status. Section 134 of the Indian Evidence Act requires no specified number of witnesses to prove a fact.⁵ Courts can convict trustworthy witnesses. Sexual offences sometimes need victim testimony, making this vital.

In recent years, Indian courts have had kid witness concerns. Child witnesses are fragile and require special care to ensure their comfort and accuracy, thus courts establish requirements for documenting their evidence. Video conferencing, in-camera testimony, and child psychologists or support staff are authorised. Indian witness testimony legislation has grown to match justice's complexity. Traditional principles of the Indian Evidence Act still apply, but judicial interpretations have expanded and refined them to address current challenges. Focus has shifted from technical evidence to witness intimidation, protection, and fair trial for all parties. As India struggles with witness protection and testimony integrity, the law is crucial to justice. Legislation and judicial interpretations control witness testimony in Indian courts to balance the rights of the accused with the need for reliable evidence.

3. UNDER INDIAN LAW, WHO IS AN EYEWITNESS?

Indian law relies on eyewitness evidence to establish the truth and provide justice. Unless discharged due to incapacity, everyone can testify in court. Witness production and examination are governed by civil and criminal process legislation and court instruction. Section 164, 'Recording of confessions and statements' of the Code of Criminal Procedure, 1973 requires witnesses to record their statements during criminal prosecutions.⁶ Witness order should be scrutinised in three stages: EIC, cross-examination, and re-examination. The party who called the witness examines them in-chief, the

² Rai D, 'Witnesses under the Indian Evidence Act' (iPleaders24 March 2020) <<https://blog.iplayers.in/witnesses-under-the-indian-evidence-act/>>

³ Jolly T, '[S.120 Evidence Act] Husband & Wife Can Testify on Behalf of Each Other without Executing Power Of...' (Livelaw.in25 June 2024) <<https://www.livelaw.in/high-court/kerala-high-court/kerala-high-court-section-120-evidence-act-husband-wife-testify-on-behalf-of-each-other-261377>> accessed 8 October 2024

⁴ Wikipedia Contributors, 'Best Bakery Case' (Wikipedia1 May 2024) <https://en.wikipedia.org/wiki/Best_Bakery_case> accessed 8 October 2024

⁵ Isha Ahlawat, 'EYEWITNESSES TESTIMONIES - a CRITICAL ANALYSIS of ITS RELIABILITY and ADMISSIBILITY under the INDIAN EVIDENCE ACT' (2022) 3 Asian Journal of Multidisciplinary Research & Review 134 <<https://ajmrr.org/journal/article/view/77>> accessed 8 October 2024

⁶ Pandey S, 'Section 164 CrPC : Examination of a Witness' (iPleaders17 February 2024) <<https://blog.iplayers.in/recording-of-statement-under-section-164-crpc/>> accessed 8 October 2024

opposing party examines them, and the party who called them re-examines them. The Indian Evidence Act, 1872, specifies examination order under Section 138.

4. FACTORS AFFECTING WITNESS RELIABILITY

Witness credibility is vital to India's criminal justice system. The Indian Evidence Act, 1872, oversees witness evidence admission and appraisal, but understanding its reliability is crucial. The psychological, social, and environmental factors impact criminal trial witness credibility and accuracy. Fallible memory and perception affect witness reliability. Several Indian court opinions have noted that human memory is imperfect and affected by several experiences. The landmark Supreme Court of India case *State of Uttar Pradesh v. Sunil and Others* (2017) stressed the importance of carefully scrutinising eyewitness testimony because lighting, distance, duration of observation, and the witness's physical and mental state at the time can affect perception and memory.

False memories also affect witness reliability. Research shows that leading enquiries may affect or create memories. Most Indian police investigations include many rounds of questioning. In *Tomaso Bruno v. State of Uttar Pradesh* (2015), the Supreme Court advised against memory-based testimony, especially when there are disparities or outside influences.⁷

Social pressure and influence impact witness evidence, especially in high-profile or politically sensitive cases. Indian courts have dealt with witnesses who were hostile due to intimidation, coercion, or social pressure. Social pressures can compel witnesses to lie or recant, as in the 2004 *Best Bakery* case. Indian courts are more aware of quick witness testimony changes and have underlined the need for effective witness protection. The Supreme Court of India-approved Witness Protection Scheme, 2018, protects witnesses based on threat assessment to circumvent social limitations. This strategy understands that witness credibility might be tarnished by fear for their own or their families' safety. Identity protection, relocation, and tight protection enable witnesses to talk freely and honestly. Indian witness reliability also depends on delayed testimony. Because Indian criminal proceedings are long, witnesses' court testimony may be delayed. Section 159 of the Indian Evidence Act allows a witness to recall an event from contemporaneous writing.⁸ Memory loss over time can greatly reduce testimony believability, courts acknowledge. In *State of Andhra Pradesh v. S. Swarnalatha and Others* (2009), the Supreme Court emphasised that delay damages witness evidence.⁹ The court stressed that time does not discredit a witness, but it does weaken the evidence's reliability, especially where there are disparities or the testimony appears tainted by later events.

External circumstances can taint evidence and impair witness recollection. A lot of media attention of high-profile Indian cases may affect witnesses' memory. Thus, courts have stressed tying delayed testimony to other evidence and assessing for external impact. Finally, Indian witness reliability is complicated. The Indian Evidence Act and judicial rulings resolve these concerns, although they remain.¹⁰ The Indian judicial system balances justice with psychological, social, and environmental aspects that may affect witness credibility as its witness testimony policy evolves. In order to improve criminal trial witness evidence, a changing system needs legislative reforms, investigation methods, and witness protection.

5. HOSTILE WITNESSES AND PERJURY IN INDIAN COURTS

Perjury and hostile witnesses plague Indian courts.¹¹ These issues pertain to witness testimony and impact criminal trials. Indian courts reconcile accurate evidence with accused rights and human conduct under legal scrutiny. Indian courts consider hostile witnesses individuals who refuse to testify. Courts have interpreted this word, which the Indian Evidence Act does not define. When a witness contradicts their police statement or deviates considerably from their expected testimony, harming the party that summoned them, they are considered hostile. Multiple issues emerge from

⁷ Supreme Court, 'Digital Supreme Court Reports' (Sci.gov.in2015) <https://digiscr.sci.gov.in/view_judgment?id=NDM40Q==> accessed 8 October 2024

⁸ 'Gender in the Making' (Google Books2024) <<https://books.google.com/books?hl=en&lr=&id=WWAQEQAAQBAJ&oi=fnd&pg=PA41&dq=Section+159+of+the+Indian+Evidence+Act&ots=b7DQ7yK0rF&sig=fveqtlmC8h5LuEApbzOdCNpQ9XU>> accessed 8 October 2024

⁹ ThemePixels, 'LawSuit - the Unique Case Finder - Research Simplified' (Lawsuitcasefinder.com2024) <<https://lawsuitcasefinder.com/casedetail?id=U2FsdGVkX1plo2s9Ylc702rfYZ5SQplo2rxeebh78NvnjUsebh78UFqi8Mgs5>> accessed 8 October 2024

¹⁰ ResponsiveWebInc, 'Law Finder !!' (Lawfinderlive.com2016) <<https://www.lawfinderlive.com/bts4/EVIDENCE.htm>> accessed 8 October 2024

¹¹ Editor_4, 'Perjury Proceedings for Hostile Witness—a Need of Hour | SCC Times' (SCC Times15 October 2021) <<https://www.sconline.com/blog/post/2021/10/15/perjury-proceedings-for-hostile-witness/>> accessed 8 October 2024

hostile witnesses. They can hurt the prosecution, especially when witnesses are crucial. Witnesses often turn hostile in notable defendant or organised crime cases due to threats, intimidation, or inducements. The case and public faith in the justice system suffer.

Indian law handles oppositional witnesses under Section 154 of the Indian Evidence Act, 1872. The court may allow the caller to ask any cross-examination questions. If a witness turns hostile, the party calling them might cross-examine them to discover the truth or contradictions.

Many courts have interpreted Section 154. In *Sat Paul v. Delhi Administration* (1976), the Supreme Court of India defined Section 154 cross-examination and hostile witness statements. The party calling the witness can extract the truth and test the witness's sincerity when the witness appears to be hiding it, the court said. Contradictory statements do not make a witness unfriendly, courts have found. In *Rabindra Kumar Dey v. State of Orissa* (1976), the Supreme Court stated that a court must be sure a witness is lying and that cross-examination is necessary for justice before branding a witness hostile.¹² The IPC covers perjury, whereas Section 154 handles adverse witnesses during trial. IPC 191–193 address producing and delivering false evidence. Perjury is knowingly giving or making false evidence in court under Section 191. Perjury in court carries a seven-year prison sentence and a fine under Section 193, whereas other instances carry a three-year sentence and a fine.

India punishes perjury severely due to its seriousness. Perjury hinders individual justice and weakens legal confidence. Perjury prosecutions in India are rare notwithstanding these provisions. Perjury charges are low for several reasons. First, wilful lying is hard to prove. When a witness becomes hostile due to threats or coercion, perjury charges are usually avoided. Long and strained Indian legal system makes perjury allegations look worse. Indian courts emphasise proactive hostile witness and perjury handling to overcome these concerns. In *Zahira Habibullah Sheikh v. State of Gujarat* (2006), the Supreme Court stressed witness protection and the necessity for courts to stop witness intimidation and influence.¹³

6. PROTECTION AND RIGHTS OF WITNESSES

Witness protection and rights are crucial to Indian judicial integrity and efficiency. Due to their importance in justice and challenges, India has taken considerable steps to safeguard witnesses. The 2018 Witness Protection Scheme tackles long standing witness safety and testimony quality difficulties in critical situations.¹⁴ The 2018 Witness Protection Scheme was formed due to growing awareness of witnesses' vulnerability, especially in organised crime or strong person scenarios. The Supreme Court of India approved the threat-based witness protection strategy in *Mahender Chawla & Ors. v. Union of India & Ors.* (2018). It categorises witnesses by hazard level: A for life, B for safety, reputation, or property, and C for lesser threats. This method provides witnesses with police protection, frequent outside surveillance, temporary relocation, close protection, home security devices, and even identity alterations in extreme cases. In-camera trials, video testimony, and identity protection are possible. Importantly, it establishes state Witness Protection Funds for protection. This project covers a key Indian legal gap. Witness protection was inconsistent between states and cases before its establishment. Critical witnesses are protected by the standard technique regardless of jurisdiction or case type. This is vital in organised crime, terrorism, and corruption investigations since witnesses are often threatened and intimidated.

The Witness Protection Scheme is advanced yet difficult to implement. Current challenges include funding, agency coordination, and law enforcement's continual protection. Courts and investigating agencies must also identify and protect vulnerable witnesses to make the system work. Witness safety and punishment, especially for significant persons, are big issues in India. Witnesses endure subtle and overt threats to influence their testimony or prevent them from testifying. Strong protection procedures are needed because coercion or enticement has rendered witnesses hostile in some high-profile cases. Many laws protect witnesses outside the Witness Protection Scheme. Indian Penal Code 195A

¹² Online H, 'Krishan Chander vs. the State of Delhi (2016) 3 SCC 108' (Heinonline.org2024) <https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/ijlmhs15§ion=159> accessed 8 October 2024

¹³ Editor CJP, 'The 2004 Best Bakery Judgement and Its Significance' (CJP1 December 2017) <<https://cjp.org.in/the-2004-best-bakery-judgement-and-its-significance/>>

¹⁴ p39a Admin, 'Unprotected Witness: A Critique of the Witness Protection Scheme, 2018 - P39A Criminal Law Blog' (P39A Criminal Law Blog3 March 2023) <<https://p39ablog.com/2023/03/unprotected-witness-a-critique-of-witness-protection-scheme-2018/>>

criminalises threatening or promoting false evidence.¹⁵ Sections 327 and 275 of the Code of Criminal Procedure allow in-camera sessions and video-conferencing evidence recording to protect vulnerable witnesses.¹⁶

Trial witness rights are vital to Indian justice. The Supreme Court has stressed witness comfort and respect throughout trials. Compassion, respect, freedom from cross-examination harassment, acceptable travel fees, and the ability to submit evidence in their preferred language are essential. Under some conditions, sexual assault victims, juveniles, and other vulnerable witnesses can testify by video conference or with aid. Some courts understand the need to safeguard witnesses and ensure fair trials. The Supreme Court underlined a kid-friendly setting and privacy for recording child witnesses' evidence in child sexual assault cases in *Sakshi v. Union of India* (2004). In order to protect witnesses, courts and police must follow the Witness Safety Scheme and prioritise rights.

7. TECHNOLOGICAL AND LEGAL REFORMS TO IMPROVE WITNESS RELIABILITY

Recent technical and regulatory changes in India aim to increase witness testimony reliability, a crucial criminal justice system component. These changes address witness intimidation, logistical issues, and faster, more accurate testimony collection. Video conferencing in trials has substantially enhanced witness reliability. Indian courts are embracing this technology increasingly since the COVID-19 pandemic required remote proceedings. The 2009 Criminal Procedure Code amendment Chapter XXIII-A governs video conferencing.¹⁷ Courts can record witness evidence via videoconferencing. Video conferencing helps hazardous or distant witnesses. Testifying safely reduces the risk of intimidation or violence for vulnerable witnesses. Videos can help kid witnesses and sexual assault victims feel more comfortable and provide honest evidence. In *State of Maharashtra v. Dr. Praful B. Desai* (2003), the Supreme Court of India recognised video conferencing as evidence because it is lawful and just.¹⁸ Video conferencing installation is tough. Internet connectivity, technology, and skilled people are lacking in some regions, and remote witness demeanour evaluation is difficult. In *Santhini v. Vijaya Venketesh* (2018), the Supreme Court set video conferencing norms, demonstrating the judiciary's proactive approach to technological regulation.

The Law Commission of India promoted witness reliability reforms. In its 198th report, "Witness Identity Protection and Witness Protection Programmes" (2006), the Commission made numerous recommendations.¹⁹ Providing a complete witness protection program, safeguarding witness identity in key instances, and revising the trial procedure to prevent witness intimidation were among them. Video conferencing, in-camera processes, and special care for vulnerable witnesses were Commission recommendations. In order to strengthen witness safety and testimony, it advised revising the Indian Evidence Act and Criminal Procedure Code. In 2018, the Witness Protection Scheme was implemented, although others are being proposed. In its 239th report (2012), "Expedition Investigation and Trial of Criminal Cases Against Influential Public Personalities," the Law Commission underlined the special challenges of influential defendant cases. Such cases should have speedy trials and greater witness protection.

Compare Indian witness reliability laws to others to assess progress and potential for improvement. The US Federal Witness Security Program (WITSEC) protects witnesses during identity change and relocation in high-risk scenarios.²⁰ India's Witness Protection Scheme 2018 is comparable but young and lacks U.S. resources. UK innovation includes Youth Justice and Criminal Evidence Act 1999 special measures directives. Examples include pre-recorded, live-link, and accused witness screening. India has implemented some of these measures, although not as often as the UK. Judges aggressively question witnesses in Germany. This lessens cross-examination's adversarial nature, which can scare or confound witnesses. While unsuitable for India's adversarial system, this method may improve witness comfort and reliability. Indian witnesses are more trustworthy due to legal and technological advances. India could expand the

¹⁵ Adda L, 'Section 195A of the IPC – Law Adda' (Lawadda.in2024) <<https://www.lawadda.in/2023/09/03/section-195a-of-the-ipc/>> accessed 8 October 2024

¹⁶ Kinra S, 'Additional District & Sessions Judge Faculty Member Chandigarh Judicial Academy' (2023) <<https://cja.gov.in/Blog/Guidelines%20for%20recording%20of%20evidence%20of%20vulnerable%20witnesses%20in%20criminal%20matters%2017.05.2023.pdf>> accessed 8 October 2024

¹⁷ 'THE CODE of CRIMINAL PROCEDURE (AMENDMENT) ACT, 2005' (2005) <<https://www.mha.gov.in/sites/default/files/2022-09/TheCCP%28Amendment%29Act%2C2005%5B1%5D.pdf>>

¹⁸ Lalit SU and Raveena Lalit, 'The New Normal in the Legal Profession: Embracing Technology' [2022] Springer 237

¹⁹ [advocatekhoj.com, 'Witness Identity Protection and Witness Protection Programmes | Law Commission of India Reports | Law Library | AdvocateKhoj'](https://www.advocatekhoj.com/library/lawreports/witnessidentityprotection/1.php?Title=Witness%20Identity%20Protection%20and%20Witness%20Protection%20Programmes&mp) (Advocatekhoj.com2024)

<<https://www.advocatekhoj.com/library/lawreports/witnessidentityprotection/1.php?Title=Witness%20Identity%20Protection%20and%20Witness%20Protection%20Programmes&mp>> accessed 8 October 2024

²⁰ G Melton, 'A Knafo Witness protection programs: Psychological and social consequences of relocation Crime & Law , volume 17 , issue 2 , p. 147 - 163 Posted: 2011

Witness Protection Scheme to all states, standardise trial video conferencing protocols, train judges, lawyers, and court staff to handle vulnerable witnesses, use pre-recorded video evidence, strengthen witness tampering and perjury laws, and introduce a witness preparation program like some Western countries.²¹ Learning from global best practices and enhancing its approach will help India ensure witness testimony reliability and protect all parties in the court process.

8. CONCLUSION

A fair and just Indian criminal justice system depends on witness dependability. The Indian testimony Act, 1872 governs witness testimony evaluation, however memory gaps and external factors can lower credibility. Perjury and hostile witnesses impair the judicial process, requiring strong legal actions. Witness unreliability must be addressed, however the Witness Protection Scheme, 2018 is an excellent start to safeguarding witnesses and reducing coercion. Legal changes, witness psychiatric help, law enforcement witness handling training, and video conferencing are involved. The judiciary uses cross-examination and legal protections to decrease untrustworthy witnesses. Finally, India's criminal court system requires reliable witnesses. For more fair criminal prosecutions, legal, technical, and cultural reforms are needed to guarantee witnesses can deliver accurate and reliable testimony. The criminal justice system is at risk without trustworthy witnesses, thus the legal framework must be updated and adapted to new challenges.

CONFLICT OF INTERESTS

None

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None

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²¹ 'Witness Protection Scheme' (Pib.gov.in2019) <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1578108> accessed 8 October 2024

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