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## HOSTILE WITNESSES: LEGAL PROVISIONS AND JUDICIAL APPROACH UNDER BSA, 2023

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### ABSTRACT

In a nation's basic justice system, the function of a witness is crucial. They support the courts in their quest for the truth. The case depends on the witnesses. "Witnesses are the eyes and ears of justice," according to Bentham. However, what occurs if these witnesses become hostile? A hostile witness is one who refuses to provide the truth when the party calling him does so. The person called by the party to prove a specific fact or issue that is relevant to the matter and who acts to prove such a fact or prove the contrary test is known as an unfavorable witness. If a witness withdraws from serving as the eyes and ears of justice, it undermines the significance and precedence of the quality of trial procedures.<sup>1</sup> Due to its incapacity, it can no longer be considered a fair trial. Can proceedings be initiated against hostile witnesses? How have hostile witnesses changed the course of cases in past few years altering the trajectory? What is the evidentiary credibility of a hostile witness?

**Keywords:** hostile, witnesses, credibility, altering, trajectory, cases, etc.

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<sup>1</sup> Law Bhoomi, <https://lawbhoomi.com/section-154-of-the-indian-evidence-act/>, (Last Visited at 15<sup>th</sup> March 2025)

## Introduction

### Historical Background

Certain outdated viewpoints that were common in ancient cultures are presented in the Indian old writings. False evidence in court has been condemned by the Dharm Shastras, which pragmatically tie people to their obligation to speak the truth and bind society. "The admonition given by the judge to witnesses is a peculiarity of the Hindu legal system." According to the moral standards of those societies, they warned the witness in advance to make true statements as part of his dharma and to maintain their dignity. A thorough explanation of the moral repercussions of perjury also instilled terror in them. Regardless of his caste rank, a witness to the truth was created by equating it with the kindness and beneficial forces of nature with developing qualities. Regardless of his caste rank, a witness to the truth was created by equating it with the kindness and beneficial forces of nature with developing qualities. "The axiomatic principle is that giving true evidence is rewarded with an afterlife in the heaven, so the corollary is that perjury leads to hell." <sup>2</sup>

### Legal Provisions

The hostile witness is discussed in Section 154 of the Indian Evidence Act. The court may allow the party who has turned hostile to cross-examine his own witness under this clause. It is an exception to the general rule that a side may cross-examine witnesses from the other party. With the court's approval, the party may cross-examine its own witness if the witness turns hostile. The court may allow the party to cross-examine its own witness at its discretion. Only if the court is satisfied that the party must be permitted to cross-examine in the interest of justice and a fair hearing does it allow it. Questions regarding the following can be asked:

- asking probing questions in accordance with section 143 of the Evidence Act to verify his credibility.
- inquiries about earlier written statements made in accordance with Evidence Act section 145. Contradictions to earlier written statements are allowed in this section.
- questions intended to assess the witness's credibility and his current situation in life in accordance with section 146 of the Evidence Act.<sup>3</sup>

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<sup>2</sup>Dr. Shabnam, "Hostile witnesses and evidentiary value of their testimony under the law of evidence", ILI Law Review, <https://ili.ac.in/pdf/shabnam.pdf>, (2017).

<sup>3</sup> Writing Law, <https://www.writinglaw.com/hostile-witness/>, (Last Visited on 16<sup>th</sup> March 2025)

## **Trial Against Hostile Witnesses**

The Supreme Court in *Kishorbhai Gandubhai Pethani v. State of Gujarat*<sup>3</sup> has succinctly elaborated the meaning of perjury in para 9, which reads as “Perjury is an obstruction of justice. Deliberately making false statements which are material to the case, and that too under oath, amounts to crime of perjury.”<sup>4</sup> Perjury can also be associated with S.229 of the BNS, 2023. The section talks about the offence of intentionally giving false evidence at any stage in a judicial proceeding. The punishment prescribed under the section is imprisonment extending up to seven years and fine extending up to ten thousand rupees. Such an act can have hazardous consequences for the case. These may include:

- Increased dependence on other evidence: If the main witness becomes hostile, the court may need to mainly rely on circumstantial evidence or other witnesses to support its claims.
- Guilt establishment difficulty: It may be difficult to prove an accused person's guilt when they provide contradictory testimony from a hostile witness.
- Trial postponements: Trial delays may result from the lengthy procedure of cross-examining a hostile witness.
- Impact on credibility: If a key witness becomes hostile, it may cast doubt on the validity of the evidence offered and call into question the credibility of the entire case.<sup>5</sup>

Owing to the harmful impacts of witnesses turning hostile, many judgements have also commented on the same. For instance, according to the Supreme Court's rulings in *Bhima Razu Prasad*<sup>6</sup> and *Bandekar Bros*<sup>7</sup>, the victim's interests must also be safeguarded, thus the investigating agency and the court must take perjury and providing false testimony seriously.<sup>8</sup>

## **Evidentiary Credibility of a Hostile Witness**

The evidentiary credibility of hostile witnesses can be traced back through various judgements given by the Hon’ble Supreme Court of India and the respective High Courts of different states as well.

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<sup>4</sup>SCC Online, <https://www.scconline.com/blog/post/2021/10/15/perjury-proceedings-for-hostile-witness/>, (Last Visited on 16<sup>th</sup> March 2025)

<sup>5</sup> Indian Institute of Legal Studies Blog, <https://www.iilsindia.com/blogs/hostile-witness-problems-and-consequences/>, (Last Visited on 18<sup>th</sup> March 2025)

<sup>6</sup> 2021 SCC On Line SC 210.

<sup>7</sup> 2020 SCC On Line SC 707.

<sup>8</sup> SCC Online, <https://www.scconline.com/blog/post/2021/10/15/perjury-proceedings-for-hostile-witness/>, (Last Visited on 19<sup>th</sup> March 2025)

- In case of *Ratnu Yadav Vs State of Chhattisgarh*, PW1 turned hostile. As a result, the court observed that “The normal rule of human conduct is that if a person wants to confess to the crime committed by him, he will do so before the person in whom he has implicit faith. It is not the case of the prosecution that the appellant had a close acquaintance with PW-1 for a certain length of time before the incident. Moreover, the version of the witness in examination-in-chief and cross-examination is entirely different. Therefore, in our considered view the testimony of PW-1 is not reliable. Hence, the case of extra-judicial confession cannot be accepted.”<sup>9</sup>
- In the case of *Podyami Sukada Vs. State of Madhya Pradesh*<sup>10</sup>, the court was of the opinion, “As stated earlier, all the witnesses to the extra-judicial confession have been declared hostile by the prosecution. True it is that the evidence of the hostile witness is not altogether wiped out and remains admissible in evidence and there is no legal bar to base conviction on the basis of the testimony of hostile witness but as a rule of prudence, the court requires corroboration by other reliable evidence.”

### **Hostile Witness Alters Case Trajectory; Tracing through Case Studies**

1. **BMW Hit and Run Case:** In Delhi, a youngster by the name of Sanjeev Nanda was accused of running sleeping pavement people over with his BMW. Three persons were immediately killed, and others suffered severe injuries. Once more, the prominent accused bought off a lot of the witnesses in this case, and the only survivor, Monoj Mallick, informed the court that he had been struck by a truck. Another witness fled, and the primary witness, Hari Shankar, declined to identify the BMW. Actually, the prosecution had no backing from any of the witnesses. The defendants were found not guilty.<sup>11</sup>
2. **Best Bakery Case:** One of the greatest examples of a miscarriage of justice is the Best Bakery trial. In this instance, the wealthy and powerful accused compelled the witnesses to become antagonistic. The prosecution was unable to prove the accusations because the witness was unable to identify the accused. One of the witnesses later acknowledged that she had become angry due to fear for her life and threats.<sup>12</sup>

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<sup>9</sup> 2024 SCC On Line SC 1667

<sup>10</sup> 2010 SCC On Line SC 773.

<sup>11</sup> Vernita Jain, “Critical Analysis of Laws Relating to Hostile Witnesses in India”, IPleaders, <https://blog.ipleaders.in/critical-analysis-laws-relating-hostile-witnesses-india/>, (2016).

<sup>12</sup> Supra Note 11.

3. Hari Singh and Anr Vs State of Madhya Pradesh: The court held the opinion that the accused should be granted the benefit of the doubt because there is a reasonable doubt regarding their identities and they have not been directly connected to the crime. The other witness, who became hostile, is also an injured witness, as we may observe. Why would someone hurt by the same group of attackers become hostile unless there was proof that he had been under pressure? To draw this conclusion, it is insufficient to merely imply that he was under pressure. In the aforesaid case, the accused who was convicted by trial court and high court was discharged by the Supreme Court, due to hostility of the witnesses in the case.<sup>13</sup>

### Suggestions

The following are some suggestions to prevent a witness from turning hostile:-

- Keeping proceedings behind closed doors
- Taking steps to protect witness identification.
- Ensuring anonymity
- Court witnesses should be treated as honored guests
- They should receive fair compensation for the costs of their travel and lodging;
- They should be given the comfort, convenience, and dignity they need when testifying in court.
- Since India does not have a legislation protecting witnesses, one should be passed.
- Establishment of state security commissions at the state level and a national security commission at the federal level.<sup>14</sup>

### Conclusion

Although the paper discussed how witnesses turn hostile, questions regarding reliability of their testimony and evidentiary value of statements of such witnesses, the plight of a witness appearing in courts in India must not be ignored and sidelined. The Apex Court noted that, in addition to the previously listed factors, the "culture of compromise" may be another important factor that causes witnesses to become hostile. In *Swaran Singh Vs state of Punjab*, the Supreme Court observed "A witness is not treated with respect in the court. He waits for the whole day and then finds the matter adjourned. And when he does appear, he is subjected to

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<sup>13</sup> Supra Note 5.

<sup>14</sup> Sachin Kumar, "Hostile Witnesses", <https://ujala.uk.gov.in/files/9.pdf>, (2018).

unchecked examination and cross examination and finds himself in helpless situation. For their reasons and others, an individual despises becoming a witness.”<sup>15</sup> The role of witnesses is indispensable in the administration of justice, as their testimonies often determine the outcome of cases. However, the challenges they face—such as intimidation, delays, and lack of protection—discourage individuals from coming forward to testify. Without proper safeguards, the justice system risks losing valuable evidence due to witness hostility. A well-structured legal framework will not only deter witness hostility but also contribute to a stronger and more reliable justice delivery system. Ensuring a witness-friendly legal environment is crucial for upholding the integrity of the judicial process and fostering a culture of truth and accountability.<sup>16</sup>

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<sup>15</sup> Supra Note 1.

<sup>16</sup> Supra Note 1.