

## HOSTILE WITNESS: FOE OR VICTIM

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### ABSTRACT

*Witnesses are of utmost importance in every case as their testimony being the direct evidence, acts as a gateway to justice. However, the study of the criminal justice system shows that witnesses have become a tool for injustice rather than justice. They are used as a shield by the accused in order to save him from the clutches of law. This has led to the introduction of the concept of 'hostile witness' which has become almost a negative feature of the justice system. However, the efforts to address this issue are not significant. Even after centuries, this problem seems to be a regular phenomenon. Therefore, the protection of witness becomes very essential in order to ensure fair trial and for promoting rule of law. The study in the present paper shows that the problem of hostile witness has become inherent in nature. Almost every case fails to reach its logical conclusion because of the contradicting testimonies of the hostile witness. The courts have discussed various factors or reasons as to why a witness turns hostile. Monetary consideration, political background of the accused, his strength to cause bodily harm or injury or threat to life, his status and position are few of them. The present laws i.e. the Criminal Procedure Code, 1973 and the Indian Evidence Act, 1872 although indirectly refers to this concept but do not contain any mechanism to remedy this problem. Also, the need for a witness protection programme or law has been emphasized in many judicial pronouncements but the legislature has hardly paid any heed to the observations of the Judiciary. The result is erosion of people's faith in the justice system where they accuse judiciary of being bias towards those who are mighty and powerful, both by money and physical strength. Thus, the present paper by analyzing the factors for witnesses turning hostile and judicial decisions seeks to establish that the protection of witness has become a dire need of the hour and suggests for a comprehensive code which will also encompass the family of the witnesses.*

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## INTRODUCTION

*“Witnesses are the eyes and ears of the justice.” - Jeremy Bentham*

They play a key role in the criminal justice system of those countries which follow adversarial system of justice. Since the launch of the case to its trial and till final decision, everything depends upon the cooperation of witnesses. They are the foundation of the prosecution case in every criminal trial. By giving evidence on oath, they fulfill the paramount duty of being a responsible citizen of the country where they reside. Such duty being to get punished the offenders for their wrongdoing. The destiny of a case depends heavily upon the statements made by a witness. The whole criminal case is build on the basis of evidence which are admissible in law and witnesses are required for such evidence, be it direct or circumstantial evidence.<sup>2</sup> If the witnesses fail or prevented from giving evidence then it may lead to deterioration of trial which will act as hindrance in fair trial.<sup>3</sup>

The Hon’ble Supreme Court in the case of *State v. Sanjeev Nanda*<sup>4</sup> observed that the problem of hostile witness is a serious issue faced by the courts in India. The reason for witness turning hostile, especially in high profile cases is monetary consideration and other tempting offers which subverts the criminal justice system of our country and thereby it erodes faith of the general public on the system, who always think that mighty people can avoid justice.

However, the problem of witnesses turning hostile is increasing day by day and there are many reasons as to why they turn hostile.<sup>5</sup> It may be due to monetary consideration or political pressure, fear to depose against accused, especially when accused is a habitual offender or holding a high position in government services, threat to life, or family pressure or other sociological factors.<sup>6</sup> In the present time, ethical values among people have plunged to such an extent that even in ordinary cases witness turns hostile.<sup>7</sup>

All of these factors result in the accused going unpunished and also lower down the rate of conviction in the country, thereby eroding the faith and attitude of general public towards the

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<sup>2</sup> Swaran Singh v. State of Punjab, (2000) 5 SCC 668.

<sup>3</sup> Zahira Habibullah Sheikh (5) v. State of Gujarat, (2006) 3 SCC 374; Ramesh v. State of Haryana, (2017) 1 SCC 529.

<sup>4</sup> State v. Sanjeev Nanda, (2012) 8 SCC 450; Ramesh. v. State of Haryana, (2017) 1 SCC 529.

<sup>5</sup> Ramesh & Others v. State of Haryana, (2017) 1 SCC 529.

<sup>6</sup> Ramesh & Others v. State of Haryana, (2017) 1 SCC 529.

<sup>7</sup> *Ibid.*

criminal justice administration.<sup>8</sup> Also at present there is no law in regard to witness protection in India. Therefore, it has become quite important to tackle this menace which is severely impacting the fair trial rule and affecting the justice delivery system.

## MEANING OF HOSTILE WITNESS

According to Black's Law Dictionary<sup>9</sup>, "a witness is one who sees, knows or vouches for something or one who gives testimony under oath or affirmation in person or by oral or written deposition or by affidavit." And 'hostile witness' is defined as "A witness who is biased against the examining party, who is unwilling to testify, or who is identified with an adverse party."<sup>10</sup>

The Law.Com Dictionary defines hostile witness as an "adverse witness in a trial who is found by the judge to be hostile (adverse) to the position of the party whose attorney is questioning the witness, even though the attorney called the witness to testify on behalf of his/her client."<sup>11</sup>

The term 'hostile witness' has not been defined or mentioned in the Indian Evidence Act, 1872 or the Code of Criminal Procedure, 1973 or any other law for the time being in force. It was first coined in the common law "*to provide adequate safeguard against the contrivance of an artful witness who willfully by hostile evidence ruin the cause of the party calling such a witness.*"<sup>12</sup>

*"Generally, a witness is labeled as hostile, when he furnishes a certain statement on his knowledge about commission of a crime before the police but refutes it when called as witness before the court during trial."*<sup>13</sup>

A hostile witness is one who does not desire to tell the truth or conceals it.<sup>14</sup> A witness is not necessarily hostile if his testimony goes against the prosecution and favours the accused.<sup>15</sup> A

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<sup>8</sup> *Ibid.*

<sup>9</sup> Black's Law Dictionary, 9<sup>th</sup> ed.

<sup>10</sup> *Ibid.*

<sup>11</sup> <http://dictionary.law.com/Default.aspx?selected=884> (last visited March 6, 2016).

<sup>12</sup> Dr. B.P. Tiwari, Role of Witness in Administration of Justice, Vol.1, No. 1, ILS LAW REVIEW (January, 2013), p. 72, [https://www.iilsindia.com/pdf/IILS\\_Law\\_Review.pdf](https://www.iilsindia.com/pdf/IILS_Law_Review.pdf) (last visited March 6, 2016).

<sup>13</sup> G.S. Bajpai, Witness in the Criminal Justice Process: A study of Hostility and Problems associated with Witness, <http://www.bprd.nic.in/WriteReadData/userfiles/file/201608240419044682521Report.pdf> (last visited March 6, 2016).

<sup>14</sup> *Sat Paul v. Delhi Administration*, (1976) 1 SCC 727.

<sup>15</sup> *Sri Rabindra Kumar Dey v. State of Orissa*, (1976) 4 SCC 233.

witness is not hostile if he gives testimony which is against the party calling him. His primary duty is to speak truth and not the obedience towards the party calling him.<sup>16</sup> A witness is hostile if he tries to suppress the truth and deliberately gives a testimony which he knows to be false and through such testimony tries to injure the case of the party calling him.<sup>17</sup> If a witness gives testimony in favour of the accused due to hostility towards the prosecution, then he can be declared hostile.<sup>18</sup>

## **CONCEPT OF HOSTILE WITNESS UNDER INDIAN LAW**

Though there are not enough provisions under the domestic law dealing directly with the issue of hostile witness, but there are certain provisions under the Indian Evidence Act, 1872 and the Code of Criminal Procedure, 1973 which are helpful in explaining the concept to some extent.

### **THE CODE OF CRIMINAL PROCEDURE, 1973**

Any police officer who is making an investigation can require the attendance before himself of any person who appears to be acquainted with the facts and circumstances of the case and it is incumbent on such person to attend if so required by the investigating police officer.<sup>19</sup> The order requiring attendance of such person must be in writing.<sup>20</sup> Where such person intentionally omits to attend, he is liable to be punished under Section 174 of the Indian Penal Code, 1860 which provides for punishment for non-attendance in obedience to an order from public servant.<sup>21</sup> Section 160 (1) of the Code of Criminal Procedure, 1973 is to be read in conjunction with Section 161 (1) of the Code of Criminal Procedure, 1973 which provides that a police officer who is making investigation can examine orally any person who is acquainted with the facts and circumstances of the case. Such police officer is also permitted to reduce into writing any statement made to him in the course of an examination under Section 161.<sup>22</sup> However, any statement made to the police officer and reduced into writing by him will not be signed by the maker of such statement and it will not be used for any purpose

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<sup>16</sup> Karaj Singh v. Amarjit Kaur and Others, 2013 SCC Online P&H 4571.

<sup>17</sup> Dadabuddappa Gouli v. Kalu Kanu Gouli and Others, AIR 2000 Kar 158.

<sup>18</sup> Fouzdar Rai and Others v. Emperor, 44 Ind Cas 33.

<sup>19</sup> Section 160, the Code of Criminal Procedure, 1973.

<sup>20</sup> Ibid.

<sup>21</sup> Section 174, the Indian Penal Code, 1860; Dr. K.N. Chandrasekharan Pillai (rev.), R.V. Kelkar, Criminal Procedure, 6<sup>th</sup> ed. 2014, p. 171.

<sup>22</sup> Section 161, the Code of Criminal Procedure, 1973.

at any inquiry or trial in respect of any offence under investigation at the time when such statement was made.<sup>23</sup> The section thus creates bar on the admissibility of such statements. However, such statements can be used to contradict such witness in the manner as provided by Section 145 of the Indian Evidence Act, 1872.

The Hon'ble Supreme Court of India in the case of *Tahsildar Singh v. State of Uttar Pradesh*<sup>24</sup> observed that the object of Section 162 of the Code of Criminal Procedure, 1973 is to protect the accused from such statements of witnesses which may have been made due to the influence of police officer conducting investigation. Thus, the section seeks to protect the interest of the accused. Justice Braund in the case of *Emperor v. Aftab Mohd. Khan*<sup>25</sup> stated that the purpose of Section 162 is to protect the accused from police officer conducting investigation who is in a position to influence the maker of the statements and secondly, to protect the accused from such witnesses who are ready to make false statements. A similar idea was expressed by the Division Bench of the Nagpur High Court in *Baliram Tikaram Marathe v. Emperor*<sup>26</sup> that "*the object of the section is to protect the accused both against overzealous police officers and untruthful witnesses.*"

The Judicial Committee in *Pakala Narayana Swami v. Emperor*<sup>27</sup> stated that the object of the section is to encourage free disclosure of information and to protect the witnesses who are giving information of as they may have made such statements because of the influence of police officer. However, it is also essential that there must be some procedure to record confessions and statements in cases in which the police officer believes that the witnesses were unlikely to stick to their statements made by them under Section 161 of the Code of Criminal Procedure, 1973. Therefore, the Code of Criminal Procedure, 1973 provides for recording of confessions and statements by the Magistrate under Section 164 of the Code of Criminal Procedure.<sup>28</sup> The Hon'ble Supreme Court in the case of *State of Uttar Pradesh v. Singhara Singh & Others*<sup>29</sup> held that the procedure prescribed by Section 164 of the Code of Criminal Procedure, 1973 is mandatory in nature otherwise it will become inconsequential. Section 164 of the Code of Criminal Procedure, 1973 seeks to achieve balance between the interests of the investigating agency and the accused person, and therefore, it should be

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<sup>23</sup> Section 162, the Code of Criminal Procedure, 1973.

<sup>24</sup> AIR 1959 SC 1012.

<sup>25</sup> AIR (1940) All 291.

<sup>26</sup> AIR (1945) Nag 1; see also *Khatri (4) v. State of Bihar*, (1981) 2 SCC 493.

<sup>27</sup> (1939) LR 66 IA 66.

<sup>28</sup> Section 164, the Code of Criminal Procedure, 1973.

<sup>29</sup> AIR 1964 SC 358.

strictly complied to. The Full Bench of the Madras High Court in *State of Madras v. G. Krishnan*<sup>30</sup> observed that the object of recording a statement under Section 164 is “to deter a witness from changing his version later by succumbing to temptations, influences, or blandishments.”<sup>31</sup>

## **THE EVIDENTIARY VALUE OF STATEMENTS RECORDED UNDER SECTION 164 OF THE CODE**

Any statement made before a Magistrate and duly recorded under Section 164 of the Code of Criminal Procedure, 1973 is considered as a public document under Section 74 of the Indian Evidence Act, 1872.<sup>32</sup> Written documents containing such statements are also presumed to be genuine as well as duly recorded under Section 80 of this Act.<sup>33</sup> Where the contents of the statement are required by law to be reduced into documentary form, for example Section 164 of the Criminal Procedure Code, 1973, then oral evidence of such contents cannot be given.<sup>34</sup>

## **THE INDIAN EVIDENCE ACT, 1872**

Certain provisions of the Indian Evidence Act, 1872, govern the use of such statements in a criminal trial. Section 141 of the Indian Evidence Act, 1872<sup>35</sup> defines leading questions as any question suggesting the answer which the person putting it wishes or expects to receive. However, such questions must not be asked in an examination-in-chief or in a re-examination except with the permission of the Court.<sup>36</sup> The Court can however permit leading questions as to matters which are introductory or undisputed or which in its opinion have been already sufficiently proved.<sup>37</sup> Such questions can also be asked in cross-examination.<sup>38</sup> The Court in its discretion may permit the person who calls a witness to put any question to him which might be put in cross-examination by the adverse party.<sup>39</sup> Such questions will include:-

- Leading Questions as provided by Section 143;

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<sup>30</sup> AIR 1961 Mad 92 (FB).

<sup>31</sup> *Ibid.*

<sup>32</sup> *State of Uttar Pradesh v. Singhara Singh & Others*, AIR 1964 SC 368.

<sup>33</sup> *Ibid.*; Dr. K.N. Chandrasekharan Pillai (rev.), R.V. Kelkar, *Criminal Procedure*, 6<sup>th</sup> ed. 2014, p. 171.

<sup>34</sup> Section 91, the Indian Evidence Act, 1872; Dr. K.N. Chandrasekharan Pillai (rev.), R.V. Kelkar, *Criminal Procedure*, 6<sup>th</sup> ed. 2014, p. 171.

<sup>35</sup> Section 141, the Indian Evidence Act, 1872.

<sup>36</sup> Section 142, the Indian Evidence Act, 1872.

<sup>37</sup> *Ibid.*

<sup>38</sup> Section 143, the Indian Evidence Act, 1872.

<sup>39</sup> Section 154, the Indian Evidence Act, 1872.

- Questions relating to previous statements made by him in writing or reduced into writing as provided by Section 145;
- Questions which tend to test his veracity, to discover who he is and what is his position in life or to shake his credit by injuring his character as provided by Section 146;

However, the courts under Section 154, must exercise their discretion in a judicious manner by proper application of mind and considering the facts and circumstances of the case.<sup>40</sup> The permission to a party to cross-examine its own witness cannot be granted without any cause or reason.<sup>41</sup> The following points emerge on analyzing Section 154 of the Indian Evidence Act, 1872:

- i) The discretion to grant permission under this section lies with the court and the court before granting permission must be satisfied that the witness is not speaking the truth.
- ii) A party can only ask such questions to his own witness which may be asked by an adverse party in a cross-examination.
- iii) The section does not mention that a witness is to be declared hostile before granting such permission.

A witness can be cross-examined as to previous statements made by him in writing or reduced in writing.<sup>42</sup> But if such writing is used to contradict him then his attention must be drawn to those parts of the writing which are used for contradicting him.<sup>43</sup> Any former statement made by a witness before any authority legally competent to investigate the fact can be used to corroborate his testimony.<sup>44</sup>

## **FACTORS RESPONSIBLE FOR WITNESSES TURNING HOSTILE**

The Hon'ble Supreme Court in the case of *Ramesh v. State of Haryana*<sup>45</sup> listed the following reasons which make witnesses retracting their statements before the Court and turning hostile.

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<sup>40</sup> Gura Singh v. State of Rajasthan, (2001) 2 SCC 205.

<sup>41</sup> *Ibid.*

<sup>42</sup> Section 145, the Indian Evidence Act, 1872.

<sup>43</sup> *Ibid.*

<sup>44</sup> Section 157, the Indian Evidence Act, 1872.

<sup>45</sup> (2017) 1 SCC 529.

1. **Threat/Intimidation:** Witnesses are often threatened and the seriousness of the threat depends upon the type of the case and the background of the accused and his family.<sup>46</sup> They are even murdered or injured so that they cannot depose in a court.<sup>47</sup> All of these factors prevent him from becoming a witness, unless there is some sort of protection assured to him.<sup>48</sup>
2. **Use of muscle and money power by the accused:** In many cases the witnesses are purchased by the accused where the accused have political patronage and comes from a financially strong background. In such cases, the witnesses are poor who are in need of money. The accused by taking advantage of such a vulnerability of the witness induce him not to be present at the trial or if he has already made a statement then he is asked to retract from his earlier statement.
3. **Protracted Trials:** In India, normally a case takes long time to reach its final decision. There exists variety of reasons due to which trial gets delayed. The trial gets adjourned again and again because of which witness gets frustrated. Justice Wadhwa in the case of *Swaran Singh v. State of Punjab*<sup>49</sup> stated that witnesses in a criminal trial may come from a far place, that too on his own cost. It has become a practice to get the case adjourned till the witness is tired or has given up. Many a times it is the scheme of the lawyers to get the case adjourned so as to prevent the witness from giving his testimony. While adjourning a case, even the court becomes a party to miscarriage of justice. Therefore, people are reluctant to become a witness and to depose in the court which negatively affects the criminal justice administration.
4. **Inducement by various means:** In certain cases, the witnesses are induced to give false testimony during the trial before the Court. The accused lure witnesses by advancing certain favours, be it money factor or other types of temptations. The result of such inducement is that the trial gets vitiated and often the accused goes unpunished because of lack of any substantial evidence to prove his guilt.
5. **Hassles faced by the witnesses during investigation and trial:** A witness is not given due respect and is not treated with dignity in a court.<sup>50</sup> He has to wait for the whole day and there is no place for him to sit.<sup>51</sup> He is not even served with a glass of water.<sup>52</sup> Most

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<sup>46</sup> Ramesh v. State of Haryana, (2017) 1 SCC 529.

<sup>47</sup> Ibid.

<sup>48</sup> Ibid.

<sup>49</sup> (2000) 5 SCC 668.

<sup>50</sup> Swaran Singh v. State of Punjab, (2000) 5 SCC 668.

<sup>51</sup> Ibid.

<sup>52</sup> Ibid.



of the times matter is adjourned which leads to wastage of time of the witness who has come to give testimony.<sup>53</sup> He is also subjected to prolonged examination-in-chief and cross-examination which leads them to frustration as many a times they are not aware with the procedures of the court.<sup>54</sup> They are also not paid diet money and if it is paid, then it is very small to meet their expenses.<sup>55</sup>

- 6. Non-existence of any clear cut legislation to check hostility of witness:** Till date in India, there is no program or legislation to check or prevent the hostility of witness by providing them proper and adequate protection and safeguards against the accused. The Hon'ble Supreme Court in the case of *Zahira Habibullah Sheikh (5) v. State of Gujarat*<sup>56</sup> observed that it is the duty of the State to protect the witnesses especially in sensitive cases where the accused has political patronage or possess money or muscle power so as to ensure that the trial does not get destroyed and truth can come out. It has also to ensure that the witness is able to depose fearlessly in a court and is free from fear of those against whom he is deposing. The rule of law requires the state to protect the life and liberty of its citizens without any discrimination on the basis of caste, creed, religion, political belief or ideology. Legislature must take measures to ensure that the witnesses, victim or informant are not tampered with by the accused. There should not be unnecessary emphasis only on the interest of the accused. There must be a provision to protect both the interests of the accused as well as society otherwise it will lead to failure of fair trial. The public interest also needs to be promoted for proper administration of criminal justice.
- 7. Culture of Compromise:** The Hon'ble Supreme Court in the case of *Ramesh & Others v. State of Haryana*<sup>57</sup> observed that many a times victim/complainant is pressurized to compromise and to change their testimony in the court. In a recent case, a dalit girl was raped and the rapist was released on bail. He threatened to rape the victim again if she refuses to compromise. After a year, she committed suicide. However, the suicide was result of pressure to compromise but such compromise was not punished and this is the reason as to why witnesses in large number of cases turn hostile.

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<sup>53</sup> *Ibid.*

<sup>54</sup> *Ibid.*

<sup>55</sup> *Ibid.*

<sup>56</sup> (2006) 3 SCC 374.

<sup>57</sup> (2017) 1 SCC 529.

- 8. Village Compromises and Peer Pressure:** In many cases, the hostile behavior is the result of village or family solidarity, political interests, family pressures, various forms of economic compensation etc.<sup>58</sup>
- 9. No punishment for Hostile Witness:** Perjury has become a common phenomenon in almost every case. There is no punishment or a complaint against the witness whom the Judge knows that he is not speaking truth. It is the duty of the court to invoke the provisions of law as contained in Chapter XXVI of the Code of Criminal Procedure.<sup>59</sup> The court has to ensure that the criminal justice system does not suffer because of witnesses who act under pressure, inducement or intimidation.<sup>60</sup> Section 193 of the Indian Penal Code, 1860 imposes punishment for giving false evidence but is rarely resorted to.<sup>61</sup>
- 10. Use of Stock Witnesses:** Stock Witnesses refers to the witnesses who are used by the police officers as witness when actual witnesses are not available to depose in the court.<sup>62</sup> There are likely chances that such a witness can be bought by the accused. The result is that the accused is acquitted of the charges if there is no other substantial evidence before the court.

## JUDICIAL APPROACH TOWARDS HOSTILE WITNESS

The approach of the Judiciary towards the 'hostile witness' can be seen in the following decisions:

### 1. *Sat Paul v. Delhi Administration*<sup>63</sup>

The Supreme Court held that the power conferred on the court by Section 154 of the Indian Evidence Act, 1872 to grant permission to a party to cross-examine his own witness is absolute in nature. Such permission will only be granted "*whenever the court from the witnesses' demeanour, temper, attitude, bearing, or the tenor and tendency of his answers, or from a perusal of his previous inconsistent statement, or otherwise, thinks that the grant of*

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<sup>58</sup> Ramesh v. State of Haryana, (2017) 1 SCC 529.

<sup>59</sup> Swaran Singh v. State of Punjab, (2000) 5 SCC 668.

<sup>60</sup> Supra, note 56.

<sup>61</sup> Ibid.

<sup>62</sup> Dr. K.V.K. Santhy, Problems in the Criminal Investigation with reference to Increasing Acquittals: A study of Criminal Law and Practice in Andhra Pradesh, <http://www.bprd.nic.in/WriteReadData/userfiles/file/201608020459199930125Report.pdf> (last visited March 6, 2016).

<sup>63</sup> (1976) 1 SCC 727.

*such permission is expedient to extract the truth and to do justice.*<sup>64</sup> The purpose of this section is to bring truth out of a witness who has resiled from his earlier statements. The cross-examination of one's own witness has nothing to do with the trustworthiness of a witness. Hence, either party can rely on the statement of such witness.

## **2. *Sri Rabindra Kumar Dey v. State of Orissa*<sup>65</sup>**

The Supreme Court relying on *Dahyabhai Chhaganbhai Thakkar v. State of Gujarat*<sup>66</sup> held that Section 154 of the Indian Evidence Act, 1872 confers judicial discretion on the court which is not qualified by any principles or conditions. However, such power must be exercised judiciously and properly in the interest of justice. The permission under Section 154 will be granted only when the court is satisfied that the witness is exhibiting hostility or he has retracted from his earlier statement or he is not willing to tell the truth. A witness is not necessarily hostile if his testimony goes against the prosecution and favours the accused. There is distinction between a statement made by way of an unfriendly act and a statement which shows truth, without any hostile intention. It largely depends upon facts and circumstances of each case.

## **3. *Syad Akbar v. State of Karnataka*<sup>67</sup>**

The Supreme Court referring its earlier decision in *Sat Paul v. Delhi Administration*<sup>68</sup> held that if the prosecution cross-examines its own witness then it does mean that the evidence of such a witness is of no value. The discretion solely vests with the Judge to decide whether due to such cross-examination witness has been wholly discredited or a part of his evidence can be accepted. If a part of the testimony of such witness is creditworthy then the court while taking due care and caution can accept such evidence and act on it. However, if the witness is wholly discredited then his evidence can be rejected by the court. The same view has been reiterated by the court in the case of *Rameshbhai Mohanbhai Koli and Others v. State of Gujarat*.<sup>69</sup>

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<sup>64</sup> *Ibid.*

<sup>65</sup> (1976) 4 SCC 233.

<sup>66</sup> AIR 1964 SC 1563.

<sup>67</sup> (1980) 1 SCC 30.

<sup>68</sup> (1976) 1 SCC 727.

<sup>69</sup> (2011) 11 SCC 111.

The Supreme Court in the case of *Khujji v. State of Madhya Pradesh*<sup>70</sup> upheld its earlier decisions in the case of *Bhagwan Singh v. State of Haryana*<sup>71</sup>, *Rabindra Kumar Dey v. State of Orissa*<sup>72</sup> and *Syad Akbar v. State of Karnataka*.<sup>73</sup>

#### **4. *State of Uttar Pradesh v. Ramesh Prasad Misra & Another***<sup>74</sup>

The Supreme Court held that the evidence of a hostile witness cannot be rejected if it is in favour of the prosecution or the accused, but it remains subject to close scrutiny. A portion of such evidence which is consistent with the case of the prosecution or the accused can be accepted. The same view has been endorsed by the court in the case of *Balu Sonba Shinde v. State of Maharashtra*<sup>75</sup>, *Gagan Kanojia v. State of Punjab*<sup>76</sup>, *Radha Mohan Singh v. State of Uttar Pradesh*<sup>77</sup>, *Sarvesh Narain Shukla v. Daroga Singh*<sup>78</sup>, *Subbu Singh v. State*<sup>79</sup>, *Rameshbhai Mohanbhai Koli and Others v. State of Gujarat*<sup>80</sup>, *Rohtash Kumar v. State of Haryana*.<sup>81</sup>

#### **5. *Zahira Habibullah Sheikh & Anr. (5) v. State of Gujarat & Ors.***<sup>82</sup>

The Supreme Court, underlining the importance of witnesses in trial observed that if witnesses are prevented from giving evidence then it amounts to violation of the principle of fair trial. It is the duty as well as the constitutional obligation of State to protect the witness as provided by Article 21 of the Constitution. While discussing various reasons for witness turning hostile, it also stressed on the need of having legislation to protect the witnesses as adopted by other nations. The witness who by turning hostile impairs the justice system must not go unpunished. Such attitude of a witness is against the rule of law as envisaged by the Constitution.

#### **6. *Manu Sharma v. State (NCT of Delhi)***<sup>83</sup>

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<sup>70</sup> (1991) 3 SCC 627.

<sup>71</sup> (1976) 1 SCC 389.

<sup>72</sup> (1976) 4 SCC 233.

<sup>73</sup> (1980) 1 SCC 30.

<sup>74</sup> (1996) 10 SCC 360.

<sup>75</sup> (2002) 7 SCC 543.

<sup>76</sup> (2006) 13 SCC 516.

<sup>77</sup> (2006) 2 SCC 450.

<sup>78</sup> (2007) 13 SCC 360.

<sup>79</sup> (2009) 6 SCC 462.

<sup>80</sup> (2011) 11 SCC 111.

<sup>81</sup> (2013) 14 SCC 434.

<sup>82</sup> (2006) 3 SCC 374.

<sup>83</sup> (2010) 6 SCC 1.

The Supreme Court held that the evidence of a hostile witness can be relied upon to the extent it is consistent with the case of the prosecution and is corroborated by other evidence. It cannot be discarded merely because the witness has turned hostile.

**7. *Paramjeet Singh v. State of Uttarakhand*<sup>84</sup>**

The Supreme Court held that although the evidence given by a hostile witness can be relied to the extent of its consistency with the case of the prosecution or of the accused. However, such evidence must be corroborated by further evidence and should be scrutinized carefully by the court.

**8. *Mrinal Das v. State of Tripura*<sup>85</sup>**

The Supreme Court held that the evidence of a hostile witness can be relied on for corroboration. If the evidence of a hostile witness is found to be credible, then such evidence can form basis for conviction of the accused.

**9. *Bhajju v. State of Madhya Pradesh*<sup>86</sup>**

The Supreme Court held that if a witness retracts from his statements made earlier and duly recorded under Section 161 of the Code of Criminal Procedure, then the prosecutor can pray to the court for declaring such witness as hostile and to cross-examine him. In such a case there is limited examination-in-chief and cross-examination by both the prosecutor as well as the defence counsel.

**10. *Govindaraju v. State & Another*<sup>87</sup>**

The Supreme Court held that the evidence of a hostile witness can be relied to the extent it supports the case of the prosecution and is corroborated by other evidence. Such evidence can also be considered to base the conviction of the accused if it indisputably points towards the guilt of the accused. However, the court has to act with greater care and caution in accepting such evidence.

**11. *State v. Sanjeev Nanda*<sup>88</sup>**

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<sup>84</sup> (2010) 10 SCC 439.

<sup>85</sup> (2011) 9 SCC 479.

<sup>86</sup> (2012) 4 SCC 327.

<sup>87</sup> (2012) 4 SCC 722.

<sup>88</sup> (2012) 8 SCC 450.

The Supreme Court held that if a witness undermines the judicial system by turning hostile, then such a witness is liable for punishment under Section 193 of the Indian Penal Code, 1860 for giving false evidence. Such behavior wears down the confidence of general public in the justice system.

### ***12. Mohan Lal & Another v. State of Punjab*<sup>89</sup>**

The Supreme Court held that it is the moral and legal responsibility of the witnesses to depose truthfully about the crime. The cooperation and participation of witnesses is imperative to serve the community by way of facilitating the criminal justice system. They have a duty to support the case of the prosecution.

The Supreme Court in the case of *Anjanappa v. State of Karnataka*<sup>90</sup> reiterated the principles laid down in the case of *Zahira Habibullah Sheikh & Anr. (5) v. State of Gujarat & Ors.*<sup>91</sup>

### ***13. Pooja Pal v. Union of India*<sup>92</sup>**

The Supreme Court upholding its decision in *Zahira Habibullah Sheikh & Anr. (5) v. State of Gujarat & Ors.*,<sup>93</sup> held that whenever a witness turns hostile, it indicates the casual and biased role of the investigating agency. Even it is the duty of the prosecution to protect its witnesses.

In the case of *Devraj v. State of Chhattisgarh*,<sup>94</sup> the Supreme Court cited with approval its decision in the case of *Bhagwan Singh v. State of Haryana*<sup>95</sup>, *Rabindra Kumar Dey v. State of Orissa*<sup>96</sup> and *Khujji v. State of Madhya Pradesh*<sup>97</sup>

### ***14. Ramesh and Others v. State of Haryana*<sup>98</sup>**

The Supreme Court highlighted various reasons which make witnesses to retract from their statements. These are threat/intimidation, inducement by various means, use of muscle and money power by the accused, use of stock witnesses, protracted trials, hassles faced by the

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<sup>89</sup> (2013) 12 SCC 519.

<sup>90</sup> (2014) 2 SCC 776.

<sup>91</sup> (2006) 3 SCC 374.

<sup>92</sup> (2016) 3 SCC 135.

<sup>93</sup> (2006) 3 SCC 374.

<sup>94</sup> (2016) 13 SCC 366.

<sup>95</sup> (1976) 1 SCC 389.

<sup>96</sup> (1976) 4 SCC 233.

<sup>97</sup> (1991) 3 SCC 627.

<sup>98</sup> (2017) 1 SCC 529.

witnesses during investigation and trial, non-existence of any clear-cut legislation to check hostility of witness. The 'culture of compromise' is another significant reason for hostility of a witness. The Court also referred to the report of Justice Malimath Committee on Reforms of Criminal Justice System, 2003. It emphasized the need of having a comprehensive law for the protection of witnesses and their family members, especially in sensitive cases.

## **CONCLUSION**

The criminal justice administration system in the country is suffering to a great extent at the hands of hostile witness. It has become almost a feature of every case that witnesses are turning hostile. Moreover, it also shows the vulnerable position of the witnesses who play an eminent role in the criminal justice system. This issue also brings into light the need for protection of witnesses which has been emphasized by the courts in its various decisions. In order to promote the constitutional goal of rule of law, the state must enact a law for the protection of witnesses which will also result in effective implementation of other laws. The provisions of the Indian Penal Code, 1860 which provides punishment for giving false evidence must be resorted to by the courts. Thus, a comprehensive code to tackle this situation is the need of the hour.