Hostile Witnesses: Socio Legal Impact on Justice Delivery System

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Abstract Witnesses are the foundation of well-functioning criminal justice system as they act as an indispensable aid to justice delivery system. They assist the court in determining the guilt or otherwise of the accused. But, the problem of witnesses turning hostile has become menace as it is the main cause of high acquittal rate of criminals involved in heinous crimes like murder, rape etc. and if no measures is taken to prevent the witnesses from turning hostile then the society will lose their faith in justice delivery system and it will lead to chaotic situation and to curb this an effective witness protection scheme is needed in order to protect the witnesses from turning hostile. The absence of witness protection legislations has encouraged the criminals to commit crime fearlessly as they are no longer afraid of law. Thus, enactment of witness protection laws to prevent the witnesses from turning hostile is need of an hour.

This paper highlights the problems of witnesses turning hostile and its effect on justice delivery system. It also analyses the importance of witnesses and protection of witnesses in criminal justice system and focuses on the need of effective legislation in order to curb the hostility in witnesses and suggest some practical measures to prevent hostility of witnesses.

Keywords: Witnesses, Criminal Justice System, Hostile Witnesses, Evidence, and Protection of Witnesses

Introduction

Witnesses play very significant role in Criminal Justice System. According to Bentham, “Witnesses are eyes and ears of Justice”, as every statement made by them before the Court of law, helps the Court to deliver justice. In criminal justice system, justice cannot be done without active and honest participation of witnesses in criminal proceedings. Yet Indian Legislature has not given proper definition to the word ‘witness’ in any of the Indian Statute, neither Code of Criminal Procedure, 1973 nor does Indian Evidence Act define the term ‘Witness’ in any of its provisions. However the dictionary meaning of the term “Witness” is a person who is present at some event and able to give information about it. In other words, “A witness is defined as 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.”

Thus from above, Witness may be defined as a person who has knowledge of occurrence of event and is capable of giving description of such occurrence before the Court of Law and Such statement made by him under oath is taken as an evidence for any purpose. Section 118 of the Indian Evidence Act, 1872 provides about the person who may testify. The section is stated as under:

“All persons shall be competent to testify unless the court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind.”

the Evidence Act envisages that all persons shall be eligible to testify, unless the court considers that they are prevented from understanding the questions put to them or from giving rational answers to these questions, because of their tender years, extreme old age and disease – whether of mind or any other cause of the same kind. Prima facie every person is a witness.

The Constitution of India recognizes the concept of fair trial under Articles 14, 21, 22 and 39A. These Articles provide protection to citizen against arbitrary and unfair proceedings.

There is no doubt that a trial must be fair to the accused, but at the same time it should also be fair for the victim of crime. So, in order to have fair trial, it is necessary that the witness should be able to give evidence or make statement without any allurement, inducement or threat from either of the parties to the trial.

However, in the recent years, India has witnessed sudden increase in the rate of witnesses turning hostile which has raised a concern about protection of witnesses in criminal trials. It is expedient to note that, India has no effective law for protection of witness of crimes, as a result of which many witnesses turned hostile during the trial, thereby obstructing the way that reach towards the end of justice. In Swaran Singh case, while elaborating on importance of Witnesses in criminal justice system, the Supreme observed that “A criminal case is built on the edifice of evidence, evidence that is admissible in law. For that, witnesses are required whether it is direct evidence or circumstantial evidence”.

It is relevant to mention that recently, India has witnessed the murder of important witnesses in high profile cases like Aasaram Bapu Case and Vyampam Case. In both of these cases, there has been numerous attacks and murders of key witnesses within a period of one year but till now no steps have been taken to protect the witnesses in these cases. Thus, protection of witnesses in criminal justice system is need of an hour.

Generally speaking, the problem of witnesses turning hostile not only cause injury to the parties who call them but also public will have no faith in administration of justice. In a landmark case, the Delhi High Court observed that:

“The edifice of the administration of justice is based upon witnesses coming forward and depositing without fear or favour, without intimidation or allurements in Court of law. If witnesses are depositing under fear or intimidation or for favour or allurement, the Foundation of administration of justice not only gets weakened, but it may even get obliterated.”

Some legislations like Section 327(2) of Code of Criminal Procedure, 1973 (i.e. Trial to be held in Camera in the cases involving offence of rape), Section 228A of The Indian Penal Code, 1860 (i.e. Protection of Identity of Victim), Section 146(3) of Indian Evidence Act, 1872 (i.e. Questions lawful in cross examination) and other Special Acts such as Section 16 of Terrorist and Disruptive Activities Prevention Act, 1987 (i.e. Protection of identity of witnesses), contains provisions for protection of witnesses but they are not adequate.

Law Commission of India in its several Reports has acknowledged the problems of hostile witnesses and examines the measures to prevent witnesses from turning hostile. The 178th Report of Law Commission suggested the insertion of Section 164A in Code of Civil Procedure, 1973 to provide for recording of statement of material witnesses by magistrate in the cases involving offences punishable with imprisonment of more than 10 years. The 178th Report also introduces certain checks to prevent the witnesses from turning hostile such as taking the signature of witness on statement given by them to the police and providing the copies of the same to the Magistrate and Senior Police officer. But these recommendations were not recognized in any of the laws and Unfortunatel India is

still lagging behind in protecting its witnesses and preventing them from turning hostile.

**Hostile Witnesses**

The term ‘Hostile witnesses’ has not been defined in any Indian laws be it Indian Evidence Act, 1872 or Court of Criminal Procedure, 1973 or any other law. However, witnesses are termed as ‘Hostile’ when they furnish a statement before the police or other agency competent to record statement, but tends to back out from their statement when they are called as a witness before the court of law during the trial in judicial proceedings.

Historically, the term ‘Hostile witnesses’ has its origin in common law. It was first coined in the common law to provide protection against the “Mischiefs of Tricky witnesses” who intentionally by furnishing false evidence defeat the cause of party calling such person as their witness. Such action not only hampers the interest of the litigating party but it also defeats the very object of judicial system that is to meet the end of justice. The “safeguard” which was provided under the common law was that the witnesses were not allowed to make any statement which contradict their previous statement. Such safeguard was initiated by declaring such witness as hostile witness, for this purpose common law let down certain peculiarities of hostile witness such as “not desirous of telling the truth at the instance of the party calling him” or “the existence of a ‘hostile amicus’ to the party calling such witnesses”.

The evidence of hostile witness remains admissible in trial and conviction can be done upon the testimony of a hostile witness, if it is corroborated by other reliable evidence. In *Bindu v. State (NCT) of Delhi* 6, the Delhi High Court held:

> “the evidence of hostile witness cannot be rejected in toto and does not effaced or washed out of the record. The testimony of such witness can be considered and accepted by the Court to the extent their version is found to be dependable on a careful scrutiny thereof. The portion of the evidence which is consistent with the case of the prosecution or defence as recorded by the court cannot be held to have washed off or unavailable to the prosecution to prove the guilt off the accused.”

Section 164 of Code of Criminal Procedure, 1973 contains the provision relating to recording of confession and statement by the magistrate. The statement recorded under this section can be a substantive evidence and it can be used for corroborating or contradicting the statement of witness in the trial. Section 161 of Code of Criminal Procedure, 1973 empowers the police officer to examine witnesses. During the trial, the witnesses are expected to restate whatever he has said before the police during the investigation. But due to use of muscle and money power from the defendant/accused side, the witness is forced to

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back out from his statement at the time of trial or may deny the whole statement made by him during investigation. If such things happen the prosecution deserves the benefit of making request to the court to declare such witness as ‘hostile’ and obtains a right to cross examine its own witness under Section 154 Indian Evidence Act, 1872. This causes negative impact on prosecution as it weakens the prosecution case and the whole case is turned in favour of accused. In order to obtain leave to cross examine, all that is necessary is that the witness’s testimony should have been adverse to the party calling him and the value of the witness’s testimony is to be judged in the light of the result of such cross examination. It is unreasonable that the good or bad faith of witness instead of being judged by the test of cross examination should be held to be prejudged by the mere fact that cross examination is permitted. When the advocate of the party calling witness finds that answer of such witness are adverse to the legal position of his client or when the witness becomes inimical towards his client, the advocate may request the judge to declare such witness as a ‘hostile’ or ‘adverse’ witness. And when after a witness has been declared as hostile, he may be asked leading questions by the party calling him which he might have been asked in cross examination by opposite party.

In Sat Pal v. Delhi Administration, the Supreme Court while elaborating the concept of ‘hostile witnesses’ observed that:

“to steer clear controversy over the meaning of hostile witness, adverse witness, unfavourable witness which had given rise to considerable difficulty and conflict of opinions, the authors of the Indian Evidence Act, 1872 seem to have advisedly avoided the use of any of those terms so that in India the grant of permission to cross-examine his own witness by party is not conditional on the witness being declared adverse or hostile. Whether the be the grant of permission under section 142 to put leading questions, or to have leave under section 154 to ask questions which might be put in cross examination by the adverse party, the Indian Evidence Act leaves the matter entirely to the discretion of the court. The discretion conferred by section 154 on the court is unqualified and untrammelled, and is apart from any question of ‘hostility’. It is to be liberally exercised whenever the court from witnesses demeanour, tamper, attitude, bearing or the tenor and tendency of his answer or from a perusal of his previous inconsistent statement or otherwise, thinks that the grant of such permission is expedient to extract the truth and to do justice. The grant of such permission does not amount to an adjudication by the court as to veracity of the witness. Therefore, in the order granting such permission it is preferable to avoid the use of such expression such as ‘declared hostile’, ‘declared unfavourable’, the significance of which is still not free from the historical, cobwebs which, in their wake bring misleading legacy of confusion and conflict that had so long vexed the English courts.”

In Gura Singh v. State of Rajasthan, the Supreme Court defined ‘hostile witness’ as a person “who is not desirous of telling the truth at the instance of one party calling him.”

Therefore, it important to note that a hostile witness is also called as adverse witness weakens the case of the party calling him.

The party can only ask the court to declare such witness as hostile, party does not have power to declare such witness as hostile. Thus the power to declare witness as ‘hostile’ lies in the hands of the court. However the court cannot suo moto declare a witness as hostile, it can make such declaration only on the request made by the party and if a witness has been declared as hostile then the party calling him may ask leading questions to such witness and this is the only stage where the status of witness declared as hostile and the witness who has not been declared as hostile that is favourable witness can be differentiated.


Factors Responsible for Problem of Witnesses Turning Hostile

The problem of witnesses turning hostile has become quite evident in present scenario many times, it has seen that witnesses of police tends to turn adverse during the trial this result in weakening of the case in the favour of the parties calling such witnesses. There are many factors which are responsible for witnesses turning hostile. The main reason behind the witnesses turning hostile are greed, fear etc. and in order to fulfil their greed and or overcome their fear, the witnesses tend to turn hostile i.e. back out from their previous statement.

A press release on July 2, 2003 by people’s union for civil liberty (PUCIL) which reported the reason behind the witnesses turning hostile in Best Bakery’s case. The report said that there are mainly two reason firstly that the statement was wrongly recorded by the police official and second possible reason was that the police had recorded the statement correctly but the same was retracted by the witnesses because of intimidation and other method of manipulation.11

Following are the primary factors responsible for hostility of witnesses:

1. Absence of Witness Protection Program

In India there is no adequate legislation regarding witness protection. With the increase in crime rate against witnesses it has become very important to fulfil the need of Witness Protection Law or Witness Protection Program. In order to stop witnesses from giving statements against the criminals involving grave offences, witnesses are threatened, injured and even murdered before giving evidence in the court of law.

In the recent case of Aasa Ram many witnesses were reported to be murdered who had made statement against the accused. But neither action has been taken against people who murdered them nor any step has been taken for the protection of remaining prosecution witnesses.

In Swaran Singh’s case12, while emphasizing on the need of witness protection program the Apex Court observed that “not only the witness is threatened, he is maimed: he is done away with or even bribed. There is no protection for him.” Use of muscle power and threat of life to witnesses has become the most common reason that compel witnesses to back out from their earlier statement during the stage of evidence in the criminal proceedings. People belonging to weaker sections of society, women, children and senior citizens are most vulnerable to this problem. Sections 151 and 152 of Indian Evidence Act, 1872 prohibit the asking of question which are indecent, scandalous, and offensive or are likely to insert or annoy the victim or witness. In Mohammad Mian v. E.13, it was held that indecent or scandalous questions which are asked merely to impeach the credit of a witness may be disallowed by the court. Thus a question to female witness whether she had become pregnant by a certain person is improper if the object in asking the question is to impeach the credit of witness. Except these two provisions which are meant to protect victim as well as witnesses, there is no other provision to protect witnesses from inducement or intimidation or threat.

2. Unreasonable Delay in Judicial Proceeding

Apart from that absence of witness protection legislation, the second factor responsible for hostility of witnesses is protracted delay in trials. Due to delay in judicial proceedings, the witnesses become frustrated over being summoned again and again to appear before the court therefore to overcome such frustration the witness himself decides to turn hostile in order to avoid such harassment.

In Swaran Singh’s case14 the SC observed that:

11. “Best Bakery Case”, available at www.pucl.org (viewed on 11-3-2016)
“It has become more or less a fashion to have a criminal case adjourned again and again till the witness tires and he gives up. It is the game of unscrupulous lawyers to get the adjournments for one excuse or the other till a witness is won over or is tired, (omitted). In adjourning the matter without any valid cause a Court unwittingly becomes party to miscarriage of justice. A person abhors becoming a witness. It is the administration of justice that suffers.”

The delay in meeting the end of justice not only causes hardship and inconvenience to the parties but it also causes great inconvenience to their witnesses. Sometimes, witnesses come from far distances to attend the court proceedings but when they reach the court they usually finds that the case has been re-notified on some other date and this causes frustration in witness. The unnecessary adjournment which results in delay is also responsible for causing frustration in witnesses.

The evil of incessant adjournments – for sufficient reasons and otherwise – has plagued the Indian judiciary for long. They are instrumental in causing hardship and inconvenience to the parties and witnesses. They are required to come repeatedly to courts, from long distances, at their own expense, to know that the case is only posted for hearing on another day. This causes frustration for the witnesses, and thus gives an opportunity to the opposite party to threaten or induce them not to speak the truth.15

However, unnecessary adjournment is regulated by Section 309 of Code of Criminal Procedure, 1973, according to this section proceeding shall be held as expeditiously as possible and that the court shall record reasons for such adjournment. Second proviso to clause (2) states that “when the witnesses are in attendance, any adjournment or postponement shall be granted only after examining them, except for special reason when it may be done without them which shall be put in writing.”

The object behind this section is to have speedy trial and to regulate unreasonable adjournment by magistrate. This section contains directions to the court to conduct criminal proceeding expeditiously on day to day basis until all the witnesses in attendance have been examined. It authorises the magistrate to remand the accused to judicial custody if necessary after cognizance of the offences or commencement of the trial. This section also regulate the powers of criminal court to postpone or adjourn the proceedings and emphasises that stay of proceeding for indefinite period should be avoided. The committee on reform on criminal justice system16 recommended in its report that a proviso should be added to Section 309. Code of Criminal Procedure to impose cost on the party who tries to obtain unreasonable adjournment.

3. Grant of Bail to the Accused by the court

The third factor responsible for hostility of witnesses is easy availability of bail to the accused involved in heinous crime. Many times, in cases involving high profile personalities the court easily grants the bail to such accused involved in heinous crime who after coming out of the jail tries to suppress their guilt by threatening intimidating and bribing the accused and the witness because of fear or greed decides to become hostile.

In HMW case17, better known as “hit and run” case, this case is one of the most eminent case as it involves the name of high profile personalities, Sanjeev Nanda, grandson of former Chief Naval Staff, S.L. Nanda, who had allegedly crushed six sleeping pavement dwellers including three policemen by his BMW car. During the trial, almost all the prosecution witnesses turned hostile, even the lone survivor of...
the hit and run retract from his earlier statement which was made by him at the time of investigation and made the statement before the Court that he was hit by a truck instead of a car. Other key witnesses also refused to identify the BMW car. There was no witness who was willing to support the prosecution case and the trial was meandering endlessly even after eight years of accident. However, later when the Court found that R.K. Anand, Senior Counsel for defence had negotiated one of the valuable prosecution witnesses for his sell out in favour of defence for a very high price. The Court declared them as ‘Hostile’.

The BMW case, is an example to show that how high profile personalities use money and muscle power on the witnesses as well as on the victim who to compel them to retract from their earlier statement and turned the case in their favour by weakening the prosecution case. Section 439 of Code of Criminal Procedure 1973 contains provision regarding the rest of the person who was released on bail but in reality no harsh action is taken against such accused. Use of money and muscle power by these accused in order to suppress the prosecution case, in many cases specially in the matter which involve high profile personality, the victims are mostly poor and being economically weak even the victim and his /her family easily get influenced by the accused and re-siled from their statement.

In Mahila Vinod Kumari v. State of Madhya Pradesh18, where the petitioner had lodged FIR against two persons on the allegations of having committing rape and it was only on the basis of the same that charge-sheet was filed against them and they were put to trial. During trial, the prosecutrix resiled from her statement made during the investigation and even denied lodging of the FIR or having had given any statement to the police. The court declared her as ‘hostile’.

Thus, the need for an hour is to provide protection to the witnesses especially women, children and people belonging to economically weaker section of the society.

4. Payment of Inadequate Travelling Allowances

Every party who is calling the witnesses to give testimony on his or her behalf, should pay a proper allowances to their witnesses who are coming from far distance. Law Commission of India in its 154th Report19 observed that allowances such as travelling allowances paid to the witness for his appearance before the court are very less and inadequate. Code of Criminal Procedure 1973 under Section 312 has the provision regarding the payment of expenses of complainant or witnesses attending the court by the state government. It says ‘that subject to any rule made by State Government, any Criminal Court may, if it thinks fit, order payment, on the part of the Government, of reasonable expenses of any complainant or witnesses attending for the purpose of any enquiry trial or other proceeding before such Court under this Code.’

However in reality witnesses are not paid adequate expenses and ultimately they have to spend their own money every time they come to the Court for attending the hearing.

In case of K.V. Baby v. Food Inspector20, the Kerala High Court held that “Section 312 empowers the Criminal Courts to order payment of reasonable expenses of complainant or witnesses attending the court for the purpose of enquiry trial or proceeding. The power vested in the Court is discretionary in nature and should be exercised on the sound judicial principals and subject to rules made by State for the purpose. In the absence of any rule, the magistrate may be justified in exercising his discretion to order the accused to deposit expenses of the witness whom he wanted to be summoned and examined.”

Due to long judicial, process the witnesses have no choice but to spend money from their own pocket every time they come to the Court therefore, they decide to turn ‘hostile’ in order avoid such expenses.

5. Lack of Adequate Facilities in the Court

The Law Commission in India in its 14th Report highlighted the problem of lack of adequate facilities in the Court in several States. According to the 14th Law Commission Report\textsuperscript{23} on reform of judicial administration, “in several state due to lack of adequate facilities in the Court the witnesses have to wait under the tree or in the veranda of the Court. They are not protected from the harshness of bad weather.” Apart from suffering such indignities and inconvenience, they have to spend time and money for attending hearing before the Court. Thus, in order to avoid such inconvenience they become ‘hostile’ so that they cannot be called again and again to appear before the court.

6. Use of Stock Witnesses by Police

Stock witness is a person used by police as a witness to give false testimony before the court regarding occurrence of a crime. The police use such stock witnesses as prosecution witnesses where real witnesses are not available or they cannot be identified. Since such witnesses are bought at a very low price, the possibility of such witnesses turning hostile is much higher and in order to get more money they turn to the side of accused and this result in acquittal of accused on the ground of unavailability of evidence as there is no reliable evidence on record to convict the accused.

In Shakuntala Chauhan v. State\textsuperscript{22} it was held that generally the evidence of stock witnesses is treated as unreliable by the Court but when it is found that there is no doubt as to credibility of evidence of stock witnesses, it can be relied, when it is corroborated by other reliable evidence. The Court should not reject such evidence only on the ground that he was stock witness.

7. Use of Money Power by the High Profile Accused

In most of the cases accused being a high profile personality often use money as a way to get rid of his conviction, in order to do so they offer handsome money to the witnesses and witnesses being a natural person is easily get swayed by the allurement offered by the accused. In such cases, the witnesses as well as the victim get influenced by the money power used by such accused in order to escape his criminal liability. Thus such criminals gets easily acquitted in our Criminal Justice System.

8. Use of Threat/Intimidation by accused

Threat/Intimidation is the most common method used by the accused to force witness to turn hostile. The threat to life of witnesses and their family member is one of the major factor responsible for the witnesses to retract from their previous statement.

In Krishna Mochi v. State of Bihar\textsuperscript{23}, the Supreme Court observed that “Society suffers from wrong convictions and it equally suffers by wrong acquittal.” In this case the Supreme Court pointed out that one of the reason may be that they do not have courage to depose against an accused because of threats to their life, more so when the offenders are habitual criminals or high ups in the Government or close to power which may be political, economic or other power including muscle power

The Delhi High Court in the case of Neelam Katar v. Union of India\textsuperscript{24} observed that “The edifice of administration of justice is based upon witnesses coming forward and deposing without fear or favour, without intimidation


\textsuperscript{22} Shakuntala Chauhan v. State, AIR 2014 Del.


\textsuperscript{24} Mrs. Neelam Katar v. Union of India, ILR (2003) II Del 377.
or allurements in Court of law. If witnesses are deposing under fear or intimidation or for favour or allurement, the Foundation of administration of justice not only gets weakened, but it may even get obliterated”.

The irony in our Criminal Justice System is that there are bundles of rights, both at national as well as international level, available to the both offenders and victims whereas witnesses who plays a vital role in criminal justice system have a very limited right as compared to the accused thus absence of rights and adequate witness protection laws compels the witnesses to turn hostile.

9. Other Factors

Other factors like self-generated fear of police in the mind of witnesses, weak enforcement of machinery corruption are the other factor which are responsible for problem of witnesses turning hostile during trial. The successful working of Criminal Justice System is usually depends upon the witnesses who are willing to furnish truthful information about occurrence of crime before the Court during trial. Threat and intimidation used by the accused to force prosecution witnesses to retract from their statement is the major reason behind the hostility of prosecution witnesses.

Impact of Problem of Witnesses Turning Hostile on Criminal Justice System

In the recent years, India has witnessed sudden increase in rate of witnesses turning hostile which has raised a concern about protection of witnesses in criminal trials. It is expedient to note that, India has no effective law for protection of witness of crimes, as a result of which many witnesses turned hostile during the trial, thereby obstructing the way that reach towards the end of justice. In infamous case like Jessica Lal, BMW case, and Best Bakery case, due to lack of protection of witnesses, many witnesses refused to appear before the court in favour of victim and turned hostile which resulted in acquittal of persons accused of heinous crimes. In Swaran Singh case, while elaborating on importance of Witnesses in Criminal Justice System, the Supreme observed that” A criminal case is built on the edifice of evidence, evidence that is admissible in law. For that, witnesses are required whether it is direct evidence or circumstantial evidence”.

The witnesses are coupled with duty to assist the court in discovering the truth but when the witness turns hostile, this result in chaotic situation in society as the whole case of prosecution can fall on a false statement of witnesses. Section 39 of Code of Criminal Procedure Act, 1973, cast a duty upon the public to give information about the commission of a certain crime to the police. The duty ends when the information has reached the police through that person or in some other ways. Failure to comply with this provision will lead to punishment under section 176 and 202 of I.P.C. and furnishing false information is punishable under section 177 of the Indian Penal Code. The duty of the person to inform the police arises only on his being aware of the commission of an offence specified in clauses (i) to (xii) mentioned under section 39. The result of furnishing false information will be that citizen starts losing its faith in the Criminal Justice System which are meant to provide justice to the victim. As long as the witness remains hostile and do not give truthful evidence in the court, victims will always suffer and people’s faith in efficacy and credibility of judicial system will continue to be eroded and shattered.

It is the moral principal that one who commits wrong must be punished so as to stop criminals from committing crimes in future and to set an example that others who also commit crimes will be punished likewise. The successful working of Criminal Justice System can be determined by the rate of conviction of criminals i.e. percentage of cases which resulted in conviction of accused. According to

national crime bureau the rate of conviction in 2004 was 36.2% while rate of conviction in year 2007 went down by 26%. The reason behind this is because of more and more witnesses are turning hostile. The problem of witnesses turning hostile is major reason for declination in conviction rate. In many cases the truth remains undiscovered and the accused are acquitted due to availability of lack of evidence against accused. Due to decline in the Conviction rate of the accused in heinous crimes, the punishment does not have deterrent effect. Compelling witnesses to become hostile and getting acquitted by the Court on the ground of non-availability of evidence, is the easiest way for the accused to escape from his criminal liability. As a result of which, they would be encouraged to commit more heinous offences as they are no longer afraid of law and this situation will create a state of complete disorder in the society.

Another impact of problem of witnesses turning hostile on criminal justice system is loss of people’s faith in judiciary. The increasing rate of acquittals, would create an impression in the mind of the common people that the court acts on a extraneous consideration while deciding the case and the confidence of the whole community in the administration of justice will be undermined and people will lose their faith in judiciary. In many cases, acquittal of an accused has been based on the evidence of witnesses who had turned hostile, especially in cases where there has been involvement of high profile personality.

In Priyadarshani Mattoo case27, the accused was charged with the heinous offence like rape and murder of one Priyadarshani Mattoo. During his trial, the witnesses of prosecution deposed falsely before the court. During the pendency of trial the father of accused was Commissioner of Delhi. The trial court acquitted the accused on a ground of benefit of doubt due to lack of availability. According to trial court, the father of accused who was in powerful position during the trial might have used his position. The Additional Session Judge, G.P. Thareja, while pronouncing the judgement made following comment: “though I know he is the man who committed the crime, I was forced to acquit him in the benefit of doubt.”

The above sentences said by the Additional Session Judge shows that even if the whole world knows who is the criminal is, the Court cannot do anything because, in judicial system the conviction is based on the availability of evidence with the prosecution against the accused that prove his guilt beyond doubt, not on the public opinion. Thus, if the witness become hostile and depose falsely before the court during the trial then it will become very difficult for the court to achieve its quest i.e. to meet the end of justice.

In Zahira Habibulla Sheikh v. State of Gujarat,28 the Apex Court observed that “Fair trial means a trial in which bias or prejudice for or against the accused, the witnesses, or the cause which is being tried is eliminated. If the witnesses get threatened or are forced to give false evidence that also would not result in a fair trial. The failure to hear material witnesses is certainly denial of fair trial.”

Today, hostility of witnesses in serious crimes and crimes committed by ‘high profile’ persons has challenged the system of criminal justice. As observed by the Apex Court: “increasingly people are believing that laws are like spider’s webs: if some light or powerless thing falls into them, it is caught, but a bigger one can break through and get away”. Conducts which illegitimately affect the presentation of evidence in proceedings before the courts have to be seriously and sternly dealt with.”

Because of high acquittal rates in the cases involving high profile personalities, make poor people to think that judicial system is not for them as they don’t have money to buy justice. As a result, they lose faith in judicial system.

Conclusion
The problem of witness turning hostile is one of the major problems in justice delivery system in India and one of the major reasons of it is protection of witnesses during and after trial. Witnesses in the cases involving high profile names are extremely vulnerable to criminal intimidation. This involves the use of muscle or money power by the criminals to force the witnesses to retract from the statement given by them against criminals during the trial. In the present scenario it is necessary to give protection to the witnesses, especially in a cases of heinous crimes like Rape, murder and other Socio-economic offences etc. but unfortunately, most of the countries of the world including India does not have adequate laws relating to treatment and protection of witnesses.

There is need for comprehensive law for the protection of witness. In the absence of comprehensive law, witnesses not only feel unsecured but also no remedy is available to them for the injuries caused to them.

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