

# INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

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Volume 7 | Issue 5

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2024

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# Eyewitness Testimony in India

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## ABSTRACT

*Under Indian Law, eyewitness plays a very significant role. An eyewitness is a witness who offers testimony to an act or transactions that he witnessed and about which he testifies in court. They are seen to be particularly important in court during a trial in order to produce a fair decision. Their involvement is crucial when the case is being formed in front of a court of law, i.e., during the preliminary stage. To testify as an Eyewitness in court, a person must be competent. They play an important role in court because their identification of the accused may result in prosecuting or conclusively convicting them. However, they cannot always be deemed reliable because there have been numerous setbacks. It is commonly stated that eyewitness testimony leads to unjust convictions, which will be further explained.*

**Keywords:** *Eyewitness, Testimony, Competent, Identification, Conviction.*

## I. INTRODUCTION

A witness is someone who can present information in court or elsewhere, either orally or in writing<sup>2</sup>. The legal framework has always relied on the testimony of eyewitnesses. It is mainly noticeable in criminal cases. However, while the information provided by eyewitnesses can be very useful in generating leads, convicting the accused, and absolving the innocent, this evidence cannot be deemed to be most effective. Even honest and good – natured witnesses might make blunders. Any human can make mistakes like differentiating an improper individual or failing to recognize the perpetrator.

A witness, on the other hand, must be entirely independent while delivering information, which means he must not be acting under any type of coercion or false means. An eyewitness is someone who has directly watched the accused committing the crime with his own eyes. Looking back at previous legal rulings in India, it has been seen that eyewitness identification plays a very important part in the early trial stage of the case being built up in court, since their identification may lead to the arrest or conviction of the suspects.

A witness has been defined in the case of *Madhu Madhuranatha v. State of Karnataka* as a person who can provide information through oral or written depositions presented in court or elsewhere. A witness is generally considered independent unless operating under duress, fraud,

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<sup>2</sup> *Madhu Madhuranatha v. State of Karnataka*, 2014 AIR (SC) 394 (India).

or deception.

This argument for accepting eyewitness testimony as substantive evidence is based on the fact that the human brain is adept and consistent at recording and recovering data about event<sup>3</sup>. However, it is critical to guarantee that the witnesses, whether eyewitnesses or not, are trustworthy as well as qualified or adequate to deliver testimony in court.

## II. EYEWITNESS UNDER THE INDIAN LEGAL SYSTEM

In a criminal proceeding, the onus of proof is always on the prosecution because it is they who must prove and demonstrate their case beyond all reasonable doubt. The accused cannot be sentenced without valid substantial proof, as proof is a vital component of a criminal proceeding. Regardless of the seriousness of the charges asserted against the accused, it is the evidence upon which any decision in a criminal procedure is based and is regarded as the most important need of criminal justice.

Section 118 to 134 of the Indian Evidence Act 1872, which falls under Chapter IX of the act, look at specific aspects of witnesses that are very significant and are required during judicial decisions in order to maintain justice and sanctity.

Section 135 of the Indian Evidence Act 1872 states that the sequence in which witnesses are produced and interrogated in civil and criminal proceedings is to be governed by law and practice<sup>4</sup>. According to Section 138 of the Act, the witnesses shall be first examined – in chief, then cross – examined, then re – examined. However, the examination and cross – examination must be related to the relevant facts of the case<sup>5</sup>.

According to Section 164 of the Criminal Procedure Code 1973, all statements of witnesses given for evidence that have significant evidentiary value must be recorded<sup>6</sup>.

### (A) Evidence given by an Eyewitness

If the eyewitness statements are natural, consistent, and in accordance with the statements of the other witnesses, the eyewitness statements are regarded reliable and are thus taken into account. However, it is critical that the witness provide the information without compulsion, motivation, or deceptive means. When delivering means. When delivering information, a witness must be entirely autonomous and free of any kind of pressure.

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<sup>3</sup> Manveen Singh, *In Eyes, We Trust: The Changing Landscape of Eyewitness Testimony*, 37 NORTHERN ILLINOIS UNIVERSITY LAW 444 (2017)

<sup>4</sup> Indian Evidence Act 1872, No. 135, Acts of the Parliament 1872

<sup>5</sup> Indian Evidence Act 1872, No. 135, Acts of the Parliament 1872

<sup>6</sup> Indian Evidence Act 1872, No. 135, Acts of the Parliament 1872

Section 134 of the Indian Evidence Act elevates the position of an eyewitness. This section states that no specific number of witnesses is required by law to prove any fact. Even one witness can be sufficient to establish a fact in a court of law. The Supreme Court has ruled that a conviction can be obtained even if just one witness testifies.

### **(B) Drawbacks of Eyewitness Testimony**

Eyewitness testimony plays a vital part in the administration of justice, but it also has various disadvantages that make it deceptive evidence and hence an untrustworthy source of information in court. The following are the factors that influence the credibility of eyewitness testimony:

#### 1. Statements made under Fear, Threat or Undue Influence

Witnesses may be threatened, induced or promised a future reward when making statements or supplying information. This is one of the primary issues that directly affects the accuracy of the evidence and leads to unjust convictions. As a result, it is critical for a witness to be free of any form of threat or incentive and to be objective while testifying.

#### 2. Hostile Witness

There is a chance that the witness will become hostile for an array of reasons. The witness may change or disagree with his previous remark, affecting the administration of justice and providing the accused with an opportunity to exploit the circumstance. The testimony of the hostile witness would not be fully discarded, but it would be subjected to inquiry, and the portion of the proof that maybe considered reliable in either party's case could be acknowledged or accepted.

#### 3. Leading Questions

Leading questions are explicitly dangerous because they might be defined in a way that leads to an inclination of findings. Such queries can cause the witnesses mind to draw incorrect connections. Several studies have shown that leading questions can lead to the implantation of deceptive information. These types of queries are highly detested in courts and should be avoided at all costs. Only questions pertaining to what was raised during direct examination. However, if there is a possibility of straying into another topical zone, the adjudicator may provide permission based on legitimate concern time as well as efficacy. However, when witnesses are provoked or harassed, they may agree to the wrong questions and give false information.

#### 4. Wrongful Identification

It is well – known that the human brain is capable of storing and retrieving knowledge about previously happened events. However, years of research have concluded that the human memory must be protected because it is extremely fragile. When the human brain cannot recall all of the details, it prefers to fill in the gaps on its own<sup>7</sup>.

#### 5. Delay in the legal Procedure

Eyewitness testimony is primarily relied on the person's ability to recollect events, especially when only limited information is provided<sup>8</sup>. Human memory, on the other hand is thought to be exceeding weak and prone to fading with time. The longer the period, the less likely the memory will be correct. On one of the leading cases, the accused was arrested, and a week later when the Test Identification Parade was scheduled to take place, the accused refused to participate. Finally, about 8 years later, the process was done<sup>9</sup>. After such a lengthy period of time, it is natural for human memory to deteriorate, rendering eyewitness evidence untrustworthy. As a result, the identification procedure must be led in a way that promotes unwavering quality, rationality and fairness.

#### **(C) Evidentiary value of an eyewitness**

Under the Indian Legal System, eyewitness testimony has always been of primary importance. In the majority of criminal trials in Indian courts, eyewitness testimony is chosen. However, it is well understood that being persuasive does not imply being correct. Eyewitness testimony is more vulnerable than many people believe.

A witness who makes different statements in different places and at different times cannot be deemed truthful. His evidence must be read and weighed in order to determine if any weight should be assigned to it. The court should proceed slowly in following up on such testimony and should look for confirmation of his evidence<sup>10</sup>.

Eyewitness testimony should not be rejected solely because the witness was related to the deceased. The court has also ruled that the testimony of such eyewitnesses cannot be dismissed simply because the witness is linked to the deceased in some way.

### **III. CONCLUSION**

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<sup>7</sup> Subodh Asana, *Eyewitness Testimonies: A Gateway to Wrongful Conviction*, (June 15, 2020, 11:30 AM), <https://blog.ipleaders.in/eyewitness-wrongful-convictions/>.

<sup>8</sup> UK Essays, *Factors that Affect the Accuracy of Eyewitness Testimonies*, (Dec 05, 2020, 6:30 PM) <https://www.ukessays.com/essays/psychology/factors-that-affect-the-accuracy-of-eyewitness-testimonies-psychology-essay.php>.

<sup>9</sup> Daya Singh v. State of Haryana, 2001 AIR SC 1188 (India).

<sup>10</sup> State of Rajasthan v. Bhawani AIR 2003 SC 875 (India).

Eyewitness testimony is crucial in trial process. In many circumstances, they play an important part in determining the fate of the accused. However, there are several factors that make it contradictory and lead to unjust and unfair conclusions. The variables such as memory rot, absence of recognition, mental stun and injury and numerous other different elements play a crucial role in making eyewitness testimony an unreliable source.

The cases which solely depends upon eyewitness testimonies have more chances of wrongful convictions. The factors leading to its drawback are the reason which causes its failure in certain cases.

This opens the door for the wrongful convictions, and when an individual is wrongfully indicated, it leads to a perversion of justice. Witnesses frequently fear threat and hardship as a result of which they make false statement or become antagonistic. Along with this, witnesses maybe required for future examinations, which requires a significant amount of time as well as travel expenditures for those who live far away, therefore in order to avoid this, they frequently provide fake information.

Not only this, but there are numerous additional elements that influence the accuracy and credibility of eyewitness evidence, such as undue influence, threat, motive, and so on.

Human memory has evolved to provide us with an individual sense of character while also directing our activities. We have a tendency to limit and overlook others when we see our contacts or experiences. Human memory is malleable.

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