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# Probative Value of Eye Witnesses Testimony in Criminal Justice System

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## ABSTRACT

*The criminal trial of an accused in India largely resides on the strength of the evidence provided by eyewitnesses. Over the recent decades, the credibility of eyewitness testimony in enabling successful prosecution of guilty accused and the avoidance of wrongful conviction of an innocent accused has become a subject of intense scrutiny. This is because eyewitnesses rely upon fallible human memory and perception for the provision of information. This article deals with the topic of eyewitness testimony. It first examines the substantive law, psychological theories as well as judicial perspectives regarding eyewitness testimonies. It describes how eyewitness testimonies are regulated by statutes, namely the Indian Evidence Act, 1872 and the Code of Criminal Procedure, 1973. Further, it discusses the role of the Supreme Court of India in refining the substantive law through landmark judgments and judgmental guidelines; this development has aimed at promoting a better and reliable version of testimony. Secondly, the article explores the psychological (perception and memory) underpinning of eyewitness testimony and provides insight into the myriad factors, such as stress, trauma and time passage, which erode the accuracy of eyewitness. Third, the article considers the legal theory surrounding the admissibility and credibility of eyewitness testimony. The focus of this part is on the law regarding evidentiary requirement or testimony corroboration and scrutiny to reduce the risk of false convictions. Finally, it elucidates the strategies for improving the reliability of eyewitness testimony through recourse to forensic science, technological evolution and legal reforms, such as the employment of DNA evidence for corroboration; video recording of the testimony; digital reconstruction of the crime scene; witness protection programmes; and training programs for law enforcement officers in cognitive interviewing.*

**Keywords:** *Eyewitness testimony, value, reliability, credibility, memory.*

## I. INTRODUCTION

An Indian criminal justice system bequeathed to it by its British colonial overlords, it has been repeatedly tinkered with, as it has responded to broader social and constitutional changes. A

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principal goal is to reach a decision that is an instance of justice, reached in a procedure that is fair, transparent and efficient. Critical to the realization of such a procedure is the trial, and part of the process in the trial is taking the evidence of eyewitnesses. The legal regime for this evidence, its admissibility and the manner in which it can be tested, is described in the Indian Evidence Act 1872. The evidence programme is an automated record so that the judge can make that choice, and act upon it in a real sense, in deciding the question of what to do with the accused person standing before him.

Eyewitness testimony, in the psychological and legal contexts, is not the testimony of an eye, but a witness. It is the witness's description of an event from their perspective – a record of that person's memory of an incident or crime. Witness testimony refers to the act of setting the commission of a crime or incident by a defendant as part of the case before the court. The primacy of eyewitness testimony in criminal trial settings is not in dispute. But in recent years, both legal and psychological worlds have raised questions about its reliability and veracity. Doubt is appropriately cast on this sort of testimony – quite often, to good effect, such as when serial exonerations resulting from DNA evidence and other forensic advances reveal its vulnerabilities – shortcomings stemming from the deficiencies of human memory and perception.

This decision of the Supreme Court of India establishes that in Indian law, eyewitness evidence has high probative value. The 'probative value' of any evidence here refers to the evidence's propensity to 'to prove or disprove the fact in issue'. This probative value of evidence depends upon the nature of witness or witnesses upon whose account is founded, the consistency of account with itself, and with other evidence referred to. The Supreme Court's decisions repeatedly stressed that probative value of an eyewitness testimony in a court of law is significant as it forms the 'eyes and ears of justice'.

There is no doubt about the fact that eyewitness evidence plays a crucial role in the criminal justice system. This is so because several factors play a critical role in the role of eyewitness in criminal case.

Firstly, many crimes are committed against individuals, and many are violent crimes, such as murder or assault. If a victim can identify her assailant, this observation may be the person's only source of evidence to link the defendant to the crime, and to implicate him in the crime, or the information may support physical trace evidence or may be the only support for conviction or innocence in the absence of physical evidence.

Further, till recently, the Indian judiciary used to attach great weight to oral evidence. The

rationale for this has been predicated on the belief that a person who had witnessed the crime knows something about what transpired and how it would help the court uncover the truth. The judicial maxim that ‘evidence must be weighed not counted’ underscores this ethos and, more than anything else, it underlines the court’s dependence on quality and not on quantity of evidence. Because of the psychological nature of human memory, including its distortions and suggestions, it is doubtful if the evidence would be reliable the psychobiological evidence shows that memory is affected by a host of stressors and factors both before and after the event may leave biases and inadvertent distortions, leading to a contamination of the eyewitness evidence.

Against this backdrop, the Indian judiciary has accepted the ‘demoralization wrought by eyewitness evidence’. Evolving steadily more sophisticated understanding of the psychological complexity of memory and perception, the courts today seem to be more accepting of the anatomy of a miscarriage of justice, and accordingly trying to find a better place of justness that strikes a balance ‘between the probative value of the evidence and the need for its admissibility in the trial itself’. Many landmark decisions such as *Tahir v. The State of Delhi* held a new dawn for an enhanced, more rigorous analysis of eyewitness evidence, emphasizing both the intrinsic nature of the evidence as well as the need for an ‘accumulation of evidence that is necessary surrounding such evidence’.

### **(A) Eyewitness Testimony**

In criminal proceedings in India, all references to the ‘eyewitness evidence’ are really intended to indicate the statement of a proposer who actually witnessed the act or any element of the crime in question. This kind of evidence is very important in providing the narrative of the crime as a sequential part of the story of a person who was at the scene of the happenings. The Indian Evidence Act, 1872 – indeed, most laws across the globe – strove to make this evidence as admissible in the court of law as any other, stating in that ‘oral evidence is admissible, subject to its being received on any of the other grounds on which oral evidence is admissible.’ For eyewitness testimony to be admissible, it must meet the standards established by relevant norms of law on §a. The reliability of eyewitness evidence depends on three elements: the clarity of memory by the eyewitness, the neutrality of the witness, and the consistency in the story available over time. Since eyewitness ‘testimony’ contains a human element, it is, on the one hand, precious and, on the other, open to variances in evaluations of ‘validity’ and ‘reliability’.

### **(B) Probative Value**

The term ‘probative value’ looks back to the possibility that a fragment of fact can diminish or

increase in a relevant reality, by virtue of that fact's having been proven. In the domain of eyewitness testimony, the probative cost needs to be balanced against the relevance, reliability and credibility of the witness's narrative in organizing facts relevant to a given case. Indian jurisprudence assesses the probative value of eyewitness testimony by way of a deeply astute lens, factoring in considerations that may include the likely capacity of the witness to process the crime scene, their instantaneous reaction and the cohesiveness of their account. Probative value is elevated for narratives that can be said to demonstrate concordance, concurrence with other evidence, and to be free from manifest motive for dissimulation. Conversely, probative value is diminished where discordance infected the stories, where evidence suggested potential bias and motivation to dissemble, or where the witness's scene of perception manifested reasons for the muting of that scene.

### **(C) Criminal Justice System**

India's legal order is structurally complex enough to be maintained by the detection, detention, prosecution and punishment of violators. It is based on ideas of fairness, justice and legal rule: it entails a multitude of institutions from the police to prosecutorial agencies to the judiciary and penal facilities, and its basic functional order is enforced by such central laws as the Indian Penal Code (IPC) of 1860, the Code of Criminal Procedure (CrPC – 1973), and the Indian Evidence Act of 1872. In this adversarial model, the two sides — the prosecution and the defense – fight against each other, and the judge is a neutral arbiter. The court said that 'the fundamental object of the criminal justice system is to administer justice in an effective and fair manner in suitable cases where a legal submission based on apprehension of law of evidence is required, and further to afford to the accused a fair trial but at the same time to protect the victim as also the society'. 'Eye witnessed version obviously remains the crux and modern-day court... still holds faith on the eye witnessed account to find out the truth in majority of the cases,' held the bench. Another error that the top court noticed on the part of the high court was that 'although the entire prosecution case is based on more or less substantial assessment of the ocular account which comprises the whole of the incident, the high court arrived at its own conclusions in a cavalier manner without any reason solely based on the inadmissible material'.

### **(D) Theories of Memory and Perception**

To make sense of eyewitness reports, it is necessary to understand something of the process underlying our memory. At the core is Encoding, the first stage of memory, when the brain takes information from the world, and converts it into a storable form. The deeper an emotion imbues an input, the stronger the trace it will leave. Fully conscious attention will usually make

a richer trace than spontaneous half-aware attention. After Storage, these memories are ready to use. The longer a memory is stored, the more accessible it will be, all other things being equal. And notably, length of storage is usually governed by how strong the trace was and how often it has been retrieved since the last time it was aired. The probability that any witnessed event will be stored is enhanced if repeated to you. Retrieval of stored memories affects their accuracy. Everyday experiences of misinformation give a sense of the way that new factual information can modify recall. You might remember watching a television news item about a tractor-smash on a highway, and afterwards heard another tractor had ploughed into the back of it. That misleading supplement would become fused with the original story in your mind, and your erroneous memory that two tractors were on the bridge would stay with you for years to come. This is a case of the misinformation effect, originating from the celebrated studies that John and Beatrice Tulving conducted at the University of Toronto on the modification of memory by new information. This complex of memory processes shows why forensic scientist and psychologists take an interest in the eyewitness testimony contributing to the outcome of legal disputes: why do these perceptions arise and what impact does that have on the proceedings?

#### **(E) Factors Affecting Memory Accuracy**

There are a number of issues that influence the ‘sensitivity’ and ‘validity’ of the eyewitness’s memory. The formation of memory could be impeded by the stress and trauma of the event of witnessing a crime, since it can provoke physiological and psychological reactions. Then, perhaps, we have the effect of any weapons that could enter the picture and provoke a familiar type of tunnel-vision we call ‘weapon focus’ in which the eyewitness allocates more attention during the commission of the crime to the weapon than to other areas of the scene of the crime (like the perpetrator’s face) or the person of the perpetrator. Finally, perhaps critical of all is the retention interval, that is, the amount of time that passes between the event and retrieval of that event – generally, the longer this, the more likely memory decay.

And of course, the characteristics of the witness (e.g., age, mental state, credibility) and of the event (e.g., complexity, duration and its various sub-components) all play an important role. There are biases in encoding and retrieval that operate at a social and cognitive level, and affect the testimony too – stereotypes, cultural and personal expectations – and even fabrications creeping into the memory bank.

## **II. LEGAL THEORIES ON EYEWITNESS TESTIMONY**

### **(A) The Admissibility of Eyewitness Testimony**

The Indian legal system permits eye witness testimony by virtue of the Indian Evidence Act, 1872. It states that a ‘courteous witness, lawfully summoned is permitted to sue and to speak the truth; this rule is violated when an eye witness is not permitted to speak on his own facts.’ Even at that juncture, eye witness testimony is not admitted without conditions. It can never be a self-sufficient piece of evidence, but is always subject to judicial scrutiny and the evidence of witness has to be tested by the judicious inquiry into the credibility and reliability of the witness, before it is considered acceptable. In a span of more than seven decades, the Supreme Court has laid down numerous judgments emphasizing the exercise and rights of admission of eye witnesses. The only observation that’s important here is that, on at least one occasion, the Apex Court appeared to have laid down that a need for corroboration would be felt where the reliability of the eye witness testimony would be in question.

The legal framework similarly recognizes aspects such as the potential for mistaken identification and the role that suggestive identification procedures can play in shaping an eyewitness’s recall. At various junctures, courts have repeatedly conveyed to the police, through their judgment writing, the significance of the manner in which eyewitnesses are questioned – both in interviews and in court – in light of the risk of contamination to their recollection.

### **(B) The Reliability and Credibility of Eyewitnesses**

Eyewitness evidence is fundamental to Indian jurisprudence. But as we all know, human memory is fallible, so courts are rather skeptical about this form of evidence. There are two issues with which they are concerned. Namely, reliability and credibility. Reliability is the question, as the word suggests, whether with the passage of time, the different versions that the witness gives to the same incident remain relatively the same. Credibility, as your readers would imagine, is whether the witness is telling the truth.

Questions that judges ask themselves as they adjudicate the witness’s reliability and credibility include: Was the witness in a position to see what happened? Did the witness react immediately — without reflection or fantasy — to transform this perceiving into this remembering? Was the witness motivated to lie or to conceal? And was the witness’s demeanor — the whole of his testimony — consistent with the story he was telling? In such testimony, the evidence is most corroborated the most serious cases present the converse of inspired confidence, in which a person breaks out of the typical monotony of social life to tell us something surprising, something unheard of, something outside the ‘normal’ framework.

Key precedents, including the judgment in *State of Rajasthan vs Kartar Singh* (1992), have prescribed elaborate cross-examination protocols to make sure that eyewitnesses are not cross-examined in ‘mattress-like or terrifying’ conditions, and to resist the ‘manifest distortion’ of memories that affect witnesses over time and lead to miscarriage of justice. It’s the quality of the testimony, not the quantity of the witnesses. This jurisprudence is an instance of a sophisticated approach to memory that embraces memory’s failings. Indian judiciary offers a tempered grammar of memory justice.

### **(C) Historical Perspective of Eyewitness Testimony in India**

Tailing the trajectory of the law of eyewitness testimony in India commenced more than a century ago under the prescript of colonial law of 19th century. The Indian Evidence Act 1872 enacts the law of evidence of evidence including the law of eyewitnesses and applies to the proceedings before every court. Cut out from the British rule-book, the act witnessed a series of amendments before it accommodated into the workings of law-enforcement process and the different courts. Case law interpretation and re-interpretation of the act over the period remained tethered not only to human rights standards and the changing legal standards but also to the principles and conceptual standards of justice itself by bestowing rights of the accused and the victim.

These developments in legal provisions about the admissibility of eyewitness testimony in India illustrate a slow yet significant shift in starting to approximate what a legal system should do to adjudicate eyewitness accounts – from an initial naïve pro-eyewitness stance that provides justifications for the credibility of evidence by invoking the straightforwardness of the story, to a more nuanced stance that recognizes the shortcomings of our human machine, so to speak, and reflects on mental factors and extra-cognitive elements affecting the reliability of eyewitness memories. With the emergence of new systems of evidence for the regulation of the Indian legal systems, these would ideally be understood as offering not just legal solutions, but playing an important part as shifts in the legal systems that demonstrate how institutions are taking account of the reality of human cognition, and the other extra-cognitive factors that impact the credibility of eyewitness testimony.

### **(D) Landmark Judgments**

Many of these judgments have been the first steps in the judicial evolution of eyewitness testimony in India, and the precedent for contemporary legal discussion on the softness or probative value of eyewitness evidence.

Though *R vs Baskerville* (1916) is a British case, the rule in that case is frequently repeated in



Indian law: An eyewitness's testimony must be corroborated in each and every case and most of all when the eyewitness's testimony is in a suspicious case. A file photo of solicitors' offices. Photo by Chris Helgren/Reuters in numerous Indian cases, this rule has been applied to promote an eyewitness-skeptical stance.

An early judicial recognition of this point comes from *Tukaram S Doghole vs State of Maharashtra* decided in 1979, in the context of Indian law, where the Supreme Court observed: It is the quality the evidence of an eye witness which is of vital importance and not the quantum of evidence. Conviction may rest on the evidence of a single eye witness provided it is recognized to be impeccable, reliable and trustworthy and not colored by partiality or bias.

*State of Rajasthan vs Kartar Singh* (1992) further reinforced the underlying rule that the evidence of the witness should be 'subjected to searching scrutiny' and that it should be 'credible' and 'not 'affected by any intentional or otherwise hyperbole of vilification or super lamination'. The court emphasized the duty of the court to 'sift' the 'cogency and credibility' of the evidence of a witness.

A closer look at these precedents shows a judicial move from general trust in eyewitness identification to an ever more skeptical stance, with each shift being accompanied by an appellate court's judicial notice of the 'foibles' of human memory and perception paired with a growing willingness to examine the reliability of eyewitness testimony. Undergirding each are judicial safeguards predicated on an awareness of the limits of human memory and on the pitfalls of eyewitness error.

This emphasis on corroboration is part of the jurisprudential shift reflected in these landmark judgments, the biggest break from the legal tide that valued the prima facie credibility of witness statements over adherence to the conservative principle of 'the mantra that all evidence must be looked into'. It is an indication that doing justice even within the disputed middle ground of the appropriate degree of confidence so as to be sure that no one would suffer a miscarriage of justice nor any innocent be convicted, occupied the mettle of the Indian judiciary.

Moreover, what is striking about these cases is that they have the courts articulating standards for judging eyewitness evidence that are exacting, but alive. The flexibility allows them to accommodate the particularities of specific cases, so that justice can be dispensed on a case-by-case basis, while the rigor ensures that such justice is administered responsibly and reliably.

### **(E) Legal Framework Governing Eyewitness Testimony in India**

With regard to India, the statutory law of eyewitness evidence is a solid building built on the principles fundamental to our Constitution law, statutory directives and judgments passed under

the writ of the Supreme Court all with the aim to get the evidence to bend its knees before a strong standard for ensuring its probative value.

### **(F) Constitutional Provisions**

Neither the Constitution of India, the supreme law of the land (unlike some other countries such as the United States of America), nor its various amendments mention or expressly refer to eyewitness testimony. Instead, Article 14-35 enshrine various rights that have a fundamental bearing on the voluntary nature and admissibility/credibility/reliability of eyewitness testimony in criminal legal proceedings. Examples of such rights are: the right of a person accused of an offence to whom a sentence of imprisonment for life has been passed, not to be deprived of his life (Article 20(2)); the right of no person accused of any offence to be compelled to be a witness against himself (Article 20(3)); the right of every person to life and personal liberty (Article 21), subject to such reasonable restrictions as the security of the State, etc (Article 22) allow. Nature and quality of eyewitness testimony is thus voluntary in nature. Article 21, the right to life and personal liberty, entails a fair and transparent legal process. The ethos of constitutional fairness trickles down the red river valley of strong jurisprudence to add various watermarks to the panoply of rights to which the accused and the witness are entitled.

### **(G) Statutory Provisions**

#### *The Indian Evidence Act, 1872*

The Indian Evidence Act, 1872, is the primary statutory law governing the admissibility and reception of evidence – including eyewitness testimony – in legal proceedings. Several parts of the Act are relevant to eyewitness testimony:

Section 60 stresses the importance of live verbalization: Every fact proposed to be proved must be proved directly; that is to say, by a person's own evidence of what he or another has directly perceived; but it is not direct evidence of the facts proposed to be proved that essentially depends, or ought to depend, on what is only an observation of the effect of those facts on a perception of the senses.

Section 118 sets out who has the right to testify, stating that 'All persons shall have the right to give evidence.' The sole exception to this right is someone who has been determined by a court to be 'incapable of understanding the questions put to him or her or of giving rational answers to them'.

Sections 119-134 lay out the rules for the examination of witnesses: their competence; the manner of the examination; the right of the adverse party to cross-examine.

These provisions reflect the legal regime's emphasis on the directness, materiality and credibility of eyewitness testimony.

### *The Code of Criminal Procedure, 1973*

The Code of Criminal Procedure, 1973 (CrPC) further regulates the procedures relating to the use of eyewitness evidence in criminal trials, by providing procedures for the examination of witnesses, taking of statements or narrations, and holding of trials, giving the defense a 'full opportunity of cross-examination' of the witnesses examined. Section 161 deals with police recording of statements, and section 164 deals with recording of statements by magistrates, laying down the procedural safeguards to protect eyewitness evidence from its origin in the investigative process all the way to trials.

### **(H) Guidelines Issued by the Supreme Court**

The Supreme Court of India, with several judgments and guidelines, has incrementally shaped the legal framework for eyewitness testimony, setting aside its admission on the basis of 'inherent human frailties' and emphasizing how the test of findings ought to be what is reasonable in law. Specifically:

In *Rameshwar S/o Kalyan Singh v. The State of Rajasthan*, another landmark decision of the Supreme Court with regards to eyewitness testimony specifically in sexual offences cases, it enunciates the rule that, as a rule of prudence, in such cases where there is no other corroborative evidence, a refusal to convict on an unsupported confession of the accused will have to be returned.

In *State of U.P. v. Ravindra Prakash Mittal*, the court reaffirmed the need to examine eyewitness testimony with particular rigor when it's the sole basis of conviction.

### **(I) Analyzing the Probative Value of Eyewitness Testimony**

Because the Indian criminal procedure also adapts free and democratic procedures from similar systems across the world, Indian criminal procedure also places a premium on eyewitness evidence as one of the most probative pieces of evidence that can be adopted in litigation. Probative value is often used to describe the persuasive quality of evidence. Asking whether eyewitness testimony has probative value is then only asking whether the testimony should result in one outcome or another in a court of law.

### **(J) Criteria for Assessing Probative Value**

Consideration of the probative value of eyewitness testimony is multifaceted. The first and crucial factor is the witness's credibility: the capacity of the witness to see, remember and

communicate the events. Examined are the witness's distance and clarity of memory, whether she was unbiased, etc.

The stability of the testimony across time is important: testimony that remains consistent across times is given higher probative value. Also, corroboration with other testimonies and other types of evidence, such as forensic evidence, makes eyewitness testimonies more reliable, and therefore, higher in probative value.

### **(K)Judicial Attitude towards Eyewitness Testimony**

#### *Weight Given by Courts*

However, the Indian judiciary has traditionally placed significant premium on eyewitness testimony for its ability allegedly to furnish – in cases of trustworthy witnesses – ‘a direct perception of the event or hearing of the utterance made in the course of a proceeding’. This is because the ideal of observation is understood to be a matter of ultimate confidence and parsimony: we assume that when witnesses can directly perceive things, they do not have to guess or wonder about the facts of the case. Accordingly, in a series of landmark judgments, the Supreme Court of India has repeatedly affirmed the evidentiary value of eyewitness testimony so long as it can be found to be trustworthy and reliable.

#### *Factors Influencing Judicial Perception*

Courts take into account such considerations as the demeanor of the witness on the stand, the witness's relationship with the parties to the litigation and any motive to lie or misstate the facts. They also examine the circumstances surrounding the witness's observation, such as the time of day and the lighting at the scene.

The courts also take into account psychological factors. After all, memory is notoriously unreliable — subject to stress, fear, sometimes even suggestion — and you can't go around jailing people based on someone's faulty recollection. A more nuanced understanding of these factors has led to a more nuanced system of adjudicating eyewitness testimony: several decades following Loftus's initial study, many courts now routinely accept expert testimony regarding the fragility of memory as common knowledge.

### **(L) Impact on Verdicts and Justice Delivery**

This probative value, in not infrequent instances, determines the judgments handed down in criminal suits. Verdicts of guilty are often grounded on eyewitness testimony. This is especially the case when the other evidence is not forensically sufficient for more certain identification and conviction. Such cases point to eyewitness testimony's potential to promote the execution

of justice by contributing to the conviction of the guilty and the exoneration of the innocent.

Yet eyewitness testimony also poses risks. Misidentification has been recognized as one of the leading causes of wrongful conviction by a number of studies and reports. India's legal system has been alerting to these risks, spawning judicial guidelines on how to improve the reliability of eyewitness identification (e.g., identification parades).

Importantly, the Supreme Court of India has set out rules to prevent the misuse of eyewitness testimony, as in the cases of *Rameshwar v. State of Rajasthan* and *Tulsi Ram Sahadu Sambre v. State of Maharashtra*, including through requiring corroboration of eyewitness testimony in some contexts and ensuring transcription of statements to prevent subsequent fabrication of evidence.

### **(M) Improving the Reliability of Eyewitness Testimony**

Ensuring the reliability of eyewitness testimony forms a central part of judicial reform in the criminal justice system in India. While they are of immense value to the judicial and policing machinery, eyewitness testimonies are riddled with pitfalls of misrecognition, misremembering, and suggestibility, and thus prone to channeling troubling miscarriages of justice. Finding ways to improve the reliability of eyewitness testimonies – be it through forensic science, technology, or reforming the law – would be very helpful.

### **(N) Role of Forensic Science**

#### *Enhancing Evidence Corroboration*

Forensic science may boost the probative value of eyewitness evidence by providing an objective counterpart to subjective testimony. A DNA match can corroborate eyewitness testimony with an assurance that pure testimonial evidence can't provide. In the watershed case *State of Gujarat v. Jayrajbhai Punjabhai Varu*, the then Gujarat High Court remarked that forensic evidence confirming eyewitness identification played an important role in satisfying the test of proof beyond reasonable doubt.

### **(O) Technological Advancements**

Technological innovations have introduced new dimensions to the authentication and preservation of eyewitness testimony, thus enhancing its reliability.

#### *Video Recording of Testimonies*

Video-recording of eyewitnesses at the immediate stages of investigation preserves the first fresh version of occurrences. Not only does this method prevent the decline in the quality of memory (as the passage of time will inevitably lead to diminishing recall; think of personal

events from five years ago versus 15) but it prevents the risk of intimidation or coaching. In *State of Maharashtra v Dr Praful B Desai* (2003), the Supreme Court of India held that testimonies that are taken through a video-conferencing system can be admitted.

#### *Digital Reconstruction of Crime Scenes*

Combining all the digital information gathered along an investigation for a crime with cutting-edge VR and 3D modelling technologies means that witnesses can virtually ‘walk through’ the scene again and again, helping viewers to recollect the events and spatial relationships between objects with increased accuracy. This approach is already proving to eliminate inconsistencies in eyewitness accounts, and is helping juries to better comprehend crime scene details.

### **(P) Legal Reforms and Recommendations**

Legal reforms aimed at protecting and empowering eyewitnesses are critical for improving the reliability of their testimonies.

#### *Witness Protection Programs*

One worry in acquiring and ensuring the reliability of eyewitness evidences is the danger of retaliation, which could unwillingly induce the witness to an error. In light of this, the recent Witness Protection Scheme, 2018, which received the Supreme Court of India nod, is indeed welcome. The purpose of the scheme is to ensure that witnesses provide true testimony willingly, with adequate security.

#### *Training Programs for Law Enforcement*

Training for law-enforcement personnel about the science of memory and how to conduct an accurate witness interview is critical. Teaching cognitive interviewing techniques can build higher-quality eyewitness reports by encouraging citizens to narrate the event as it happened, rather than in a more suggestive, leading fashion that is highly susceptible to contamination. Such modules on the role of psychological principles in gathering evidence can be found in the curricula at the prestigious National Police Academy and at police training institutes around the country.

### **III. CONCLUSION**

To analyse the probative value of eyewitness testimony in the Indian criminal justice system is to attempt an understanding of the complex interplay between legal principles, basic psychological realities and the broader goals of justice. Once valued as sacrosanct and not subject to open scrutiny, eyewitness testimonies (in common with other forms of testimonial evidence) have come under a finer scrutiny. Attempts to differentiate ‘good’ eyewitness

testimonies from the many that are inherently unreliable have not been entirely successful: there is still a sort of ‘more trouble with eyewitnesses’ mindset. Valued in courtrooms over many years, often accepted as if unquestionable and uninviting of open scrutiny, eyewitness testimonies have begun to be more viewed skeptically, or at best with the understanding that such testimonies are often imbued with many errors and subject to be re-evaluated and looked at critically alongside all other relevant and admissible evidence. The legal framework applicable to eyewitness evidence is a robust one, based on constitutional provisions and the statutory framework, coupled with judicial guidelines pronounced in cases and key judgments. In particular, the Indian Evidence Act, 1872, and the Code of Criminal Procedure, 1973, make the ordinary rules for the introduction and examination of eyewitness evidence. But it is the Supreme Court of India which evolved the fine formulations of the rules about the testimonial evidence of eyewitnesses. These expert guidelines also take account of the many well-rehearsed psychological demonstrations that eyewitnesses’ testimonies are often flawed and vulnerable.

As applied to eyewitnesses, they help us to see the processes of encoding, storage and retrieval – along with the effects of stress, trauma, time that has elapsed, and cognitive biases – as sources of distortion that can affect the reliability of witnesses’ accounts. These psychological theories demonstrate just how essential it is to treat eyewitness identifications with caution whenever the outcome of a trial turns on such testimony. The Indian judiciary has moved in this direction from an initial naive pro-eyewitness stance to a more nuanced and skeptical one, taking into account human frailty and mental factors that affect eyewitness memories. The shift is evident in the new emphasis on corroboration, dependent on the high likelihood that witnesses witnessed what they claim to have witnessed; and skeptical scrutiny of witness-credibility, including psychological factors.

Though eyewitness testimony is an important factor in verdicts and justice is, to a large extent, doled out based on eyewitness testimony, eyewitnesses themselves present problems. Eyewitness misidentification has been the leading cause of wrongful convictions, which causes us to think twice about the reliability of eyewitness testimony and, perhaps, its overuse. The response to the problem of misidentification has taken place in several different spheres. Notably, the Indian judiciary has developed certain judicial guidelines for improving eyewitness identification and preventing its misuse. In addition, the reliability of eyewitness testimony would undoubtedly improve if at least two of the aforementioned procedures are followed: forensic science, technology and legal reform. On the forensics side, eyewitness testimony has the potential to be corroborated by forensic evidence such as DNA. The availability of DNA, irrespective of whodunit, to corroborate or refute eyewitness testimony improves the probative

value of the eyewitness because it takes the eye of the beholder away from the prosecution or the defense. Second, the technology of video recording testimonies and facilitating digital reconstruction of the crime site can help preserve the freshness of eyewitness recollection and reduce the potential of eyewitness suggestion during the interview period. Legally, witness protection programmes and training of police officers can also help. Effective witness protection programmes can take away the intimidation from witnesses and encourage them to come forward, take the stand and provide testimonials without any fear of victimization. Second, training programmes for police officers to learn cognitive interviewing of eyewitnesses can reduce the rates of misidentification by decreasing the potential of suggestion from law enforcement investigation officers.

To conclude, the evidentiary worth of eyewitness evidence in the Indian criminal justice system is a fine balance between legal notions and underlying psychological realities. While the judiciary has taken valiant attempts at safeguarding the reliability and probative nature of such evidence by introducing measures assisting the memory of eyewitnesses, it is of paramount importance that these endeavors continue in light of the enduring sensitivity of human memory functioning and witness suggestibility.

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