



TESTIMONY OF EYEWITNESS AND ITS RELIABILITY IN INDIA: A CRITICAL ANALYSIS

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ABSTRACT

Under Indian law, an eyewitness has a crucial function to perform. An eyewitness is a witness who provides evidence regarding an act or transaction that he personally witnessed and about which he testifies in court. They are seen as being of utmost importance in the courtroom during the trial in order to produce a fair and just judgment. They are involved in the beginning procedure, or when the matter is being developed before the court. The witness must be qualified and competent to testify in court as an eyewitness. As their identification of the accused may lead to charges or a conviction, they play a highly important role in the court. Yet, they are not always regarded as trustworthy because there have frequently been a number of challenges. Eyewitness testimony is frequently cited as having caused erroneous convictions because of unreliable or erroneous evidences produced by them. Yet, there is no restriction on condemning someone based only on a single witness' testimony. There is a persistent notion that states that evidence should be weighed rather than counted. Eyewitness testimony's reliability and accuracy can be tested, and research has shown that the witness's visible evidence is useless without the witness's awareness.

I. INTRODUCTION

India is where the law of evidence first appeared. The Sakshi, or "witnesses," were regarded by the Dharma Sastras as an essential tool for establishing the truth in contentious matters. The philosopher Yajnavalkya, who lived in the eighth century BCE, wrote extensively on documentary (lekhyas) and oral (abdaprama) evidence. Contrary to today, there were stringent restrictions on who might testify in civil trial. A witness is a person who is qualified to offer testimony, either verbally or in writing, either in court or elsewhere. An eyewitness is a person who has personally witnessed the accused's commission of the crime. Children, dependents, lunatics, women, or people in terror frequently gave tainted testimony, and rest of the witnesses needed to be of high moral standing to have their words

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count. It was widely believed that documentary evidence was preferable to oral testimony since the latter might be easily manipulated. In reality, a review of all ancient laws indicates a pattern of purposeful witness exclusion intended to control their competence and bar anyone whose credibility might be legally questioned. In contrast, there were many fewer requirements for being a witness in a criminal trial. It was argued that crimes might occur in locations where it would be challenging to find enough evidence—such as caves, woodlands, and so on—and that one would have to settle for witnesses that were available. The conduct of criminal proceedings and the gathering of evidence in Indian subcontinent underwent seismic upheaval with entrance of the British. In the early years of British rule, courts established in the Presidency towns followed evidentiary procedures adapted from English common law. Some locations used a combination of customary law and traces of Islam law. The Indian Evidence Act was later passed in 1872 and is still in effect today. Witnesses are included in Chapter IX of the Act (Sections 118 to 134). Section 118 allows all competent persons "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". Every eyewitness can testify in a trial, so long as the court doesn't expressly forbid it for the reasons outlined in Section 118. The usual rule is that since the (eye) witness is under oath, they must be telling the truth unless it can be conclusively proven otherwise. It is crucial that trustworthy and truthful witnesses come forward when major crimes like murder, arson, or rape are committed. The problem is that, when recalling the trial, most witnesses to horrifying acts are frequently so horrified and traumatized by their experience that their memory frequently fails them. Furthermore, most people don't pay enough attention to their surroundings to accurately recall tiny details that make up crucial evidence, like a phone call or person they glimpsed briefly before it vanished from crime scene. India's evidence law jurisprudence acknowledges this. A review of the law as it is currently written reveals that judges give eyewitness testimony an excessive amount of weight when proving a crime. If the reliability requirement is met, a conviction can be obtained on the testimony of a lone witness. Courts may demand that the witness' testimony be independently verified if they believe that he is not entirely trustworthy or if it is established that he has a stake in the prosecution. The testimony is only completely thrown out when just one witness is revealed to be completely unreliable. Furthermore, it has been established that courts should not reject an eyewitness account on the basis of "an eerie view" provided by a medical witness under the auspices of Section 45 of the Indian Evidence Act, 1872 (hereafter the "Act"). In another instance, the court made it clear that the "falsus in uno, falsus in omnibus" principle would not be applicable to eyewitness testimony after a housewife who had witnessed her husband's murder had given inaccurate descriptions of some elements of the crime scene's surroundings. It was argued that slight inaccuracies and descriptive errors that might have been made under the strain of cross examination had to be pardoned when determining the veracity of the testimony.

Announcements like the ones stated above show how dedicated Indian courts are to advancing the victim's rights. Although Indian procedural law places a lot of stress on the due process model, it is admirable that courts have created and structured criminal procedure to give significant weight to eyewitness statements. Yet, this has

frequently come at the expense of reducing the rights of the accused. Such a strategy has occasionally stood in the way of full justice being served, and the "innocent until proven guilty" maxim has been disregarded.

The testimony of the eyewitnesses has always been crucial to the legal structure. That frequently occurs during criminal investigations and trials. The information provided by eyewitnesses can be very useful in developing leads, convicting the accused, and exonerating the innocent, however it cannot be said that this evidence is the most effective. Nevertheless, mistakes can be made by even sincere and kind witnesses. Each human can make mistakes like picking out the wrong person or failing to identify the criminal. While giving information, a witness must be entirely impartial, which is to say, he must not be acting under any form of coercion or deceptive means.

Looking back at earlier Indian court rulings, it has been noted that eyewitnesses are extremely important during the preliminary trial phase of the case's development because their identification may result in the suspects' detention or conviction. The assumption that eyewitness testimony should be accepted as substantive evidence is supported by the fact that the human brain is adept and reliable at storing and retrieving information about occurrences. Yet, it is crucial to check the credibility and suitability of all witnesses—eyewitnesses or not—before they provide testimony in court.

II. RELEVANCY OF EYEWITNESS UNDER THE INDIAN LEGAL SYSTEM

The Indian legal system has long placed a premium on eyewitness testimony. In most criminal cases, eyewitness testimony is preferred in Indian courts. Nonetheless, it is well recognized that being persuasive does not equate to being truthful. Contrary to popular belief, eyewitness testimony is less reliable. A witness cannot be said to respect the truth if they make different statements at various locations and times. His supporting documentation must be read carefully and taken into account as a whole to determine whether any weight should be assigned to it. Following up on such a testimony requires caution, and the court should look for other evidence to support it. The significance of forensic and medical research was only realised, nevertheless, after examining the numerous flaws in eyewitness testimony. Two new sections were added to the Criminal Process Code (Amendment) Act of 2005, allowing the Investigating Officer to get DNA samples from both parties with the assistance and help of the medical professional. Yet, these portions deal with the investigation of sexual offences.

When DNA testing first became available in the 1980s, it was possible to identify both the actual offenders and others who were innocently but mistakenly held responsible for the wrongdoing with an extraordinary degree of accuracy. Eyewitness testimony shouldn't be discounted solely because the witness was a close relative of the dead. The court has also ruled that the testimony of such eyewitnesses cannot be disregarded for the simple reason that the witness is linked to the dead in some way. Additionally, it is believed that because of their relationship, their testimonies must be carefully examined. If the findings are consistent and there are no inconsistencies, the testimony is deemed sufficient and accepted.

The comments made by the eyewitness are deemed reliable and are consequently taken into consideration if they are genuine, consistent, and agree with the statements made by the other witnesses. Nonetheless, it is crucial that the eyewitness must not use coercion, deception, or other unethical tactics when giving the statements. An eyewitness must be entirely impartial and unaffected by any pressure when giving testimony. The burden of proof in a criminal process is always on the prosecution because it is up to them to prove and show their case beyond a shadow of a doubt. Due to the fact that evidence is an essential part of the criminal process, the accused cannot be possibly punished without sufficient and valid evidence. Regardless of how sincere the accusations made against the accused are, the evidence is what a criminal process is determined on, and it is thought to be the most important aspect of criminal justice. The relevant sections of the Act of 1872², which are found in Chapter IX of the statute, examine specific characteristics of the witnesses that are crucial and necessary for preserving justice and fairness throughout judicial proceedings, mention the following: Competency, compellability, privileges and quantity.

The order of witnesses produced and examined with regard to the civil and criminal procedures, respectively, are to be governed by the law and practice, as per the relevant section under the Act of 1872.³ The witnesses will be first cross-examined, then re-examined, as per the provisions of the Act.⁴ While the cross-examination need not be limited to the facts the witness discussed during the witness's initial cross-examination, both the examination and cross-examination must be related to the pertinent facts of the case. There is also a provision that the statements of all the witnesses having a high evidentiary value must be recorded.⁵

The comments made by the eyewitness are deemed reliable and are consequently taken into consideration if they are genuine, consistent, and agree with the statements made by the other witnesses. Yet, it is crucial that the witness not use any form of coercion, ulterior motivation, or dishonest tactics when giving the testimonies. A witness must be entirely impartial and unaffected by any pressure when giving testimony. According to Apex Court, testimony of an eyewitness can't be excluded based solely on possibility that it's untrue without conducting necessary due diligence. While there may always be slight variations in testimony of different eyewitnesses, no evidence should be disregarded or rejected in court based on a few adornments. Because there will always be tiny discrepancies in the responses or utterances of different people, it is impossible for different people to have comparable reactions or follow a consistent pattern. There is no set standard for how a person should react because everyone responds to similar situations in their own unique ways.⁶

III. EYEWITNESS TESTIMONY: OBSTACLES

Eyewitness testimony plays a crucial part in the administration of justice, but it also has a number of flaws that render it misleading evidence and make it an unreliable source of information in court. The following list of elements can be used to determine how reliable an eyewitness account is:

² The Indian Evidence Act, 1872 (Act 1 of 1872), s. 118 to 134

³ The Indian Evidence Act, 1872 (Act 1 of 1872), s. 135.

⁴ The Indian Evidence Act, 1872 (Act 1 of 1872), s. 138.

⁵ The Indian Evidence Act, 1872 (Act 1 of 1872), s. 164.

⁶ *Pratap Chauhan v. Ram Naik*, AIR 2001 SC 164.

1) Anxiety

Whether or whether they are the victim, a person might experience a lot of stress when committing a crime. Therefore the guy might not be able to monitor the scenario as well as he would have usually due to excessive levels of tension. Such tension can impair a person's capacity to accurately perceive a scenario and cause him to lose memory of it afterwards. As a result, one of the factors that influences how accurately an eyewitness reports what happened is stress.

2) Harassment Fear

It is common for people to travel to distant regions for business or pleasure. To be able to appear and testify in court, they must leave their families behind and take time off from their employment. The fact that they have to pay for their own travel expenses is another problem they confront. They suffer a great deal as a result of this. As a result, the witnesses experience harassment, and many times they are tempted to make false statements in an effort to avoid this anxiety, which has a negative impact on the administration of justice.

When making comments or supplying information, witnesses may be threatened, coerced, or promised a future reward. This is one of the main elements that adversely impacts the reliability of the evidence and results in erroneous convictions. Consequently, it is crucial that a witness testify without the influence of any threat or incentive and without any ulterior motivation.⁷

3) Inaccurate Identification

It is commonly known that the human brain is adept and skilled in storing and retrieving details of previously occurring events. But it has also been established after years of study that the human memory must be protected because it is so fragile. Since the human brain is unable to recollect all the facts, it tends to fill in the blanks on its own by filling in the missing details.

4) A Delay in the Judicial Process

When there is limited material available, eyewitness evidence often depends on the witness's memory of what happened. Nonetheless, it is believed that the human memory is extremely brittle and tends to disappear over time. The likelihood that a recollection will be accurate, decreases with time. When the Test Identification Parade was scheduled to take place a week after the accused's detention in one of the prominent instances, the accused refused to participate. Finally, the procedure was finished after roughly 8 years. It is highly common for human memory to

⁷ Katherine Puddifoot, "RE-EVALUATING THE CREDIBILITY OF EYEWITNESS TESTIMONY: THE MISINFORMATION EFFECT AND THE OVERCRITICAL JUROR," 17 *Episteme* 255–79 (2020).

deteriorate after such a lengthy period of time, rendering eyewitness testimony untrustworthy. As a result, the identification process must be run in a way that promotes consistency, reason, and fairness.

5) Hostile Witness

There is a chance that the witness could become hostile for a number of reasons. The witness may retract or revise prior remarks, which would again interfere with the administration of justice and present an opening for the accused to exploit the circumstance. The testimony of a hostile witness won't be completely disregarded; nevertheless, they will be subjected to an examination, and the portion of the evidence that can be trusted to support either party's position can be acknowledged or accepted.

6) A Malleable Human Memory

The encounters that the human brain has do not all get recorded. Only descriptions that are based on those interactions are kept there. They may be eerily accurate in some instances, but they could also be made up, and most of the time they are a combination of the two. Eyewitness testimony is thought to be a particularly strong form of evidence for sentencing the accused. Individuals ultimately retain the information in a way that makes sense to them and sounds pleasant. Even among the most sure-footed and upbeat witnesses, it depends on unconscious memory distortions and predispositions. Yet both are regarded as being undefinable if there is no objective proof.

IV. QUESTIONS THAT LEAD

Since they might be defined in a way that could influence the outcomes, leading questions can be particularly dangerous. Such inquiries may cause the witness's mind to draw erroneous conclusions. Several studies have demonstrated that misleading information can be implanted by asking leading questions. These sorts of queries are deemed to be severely disliked in the court and should be avoided at all times. Only inquiries pertaining to issues brought up during the direct examination may be made by the solicitor during the cross-examination. Nonetheless, if there is a risk to veer off subject, the adjudicator may grant authorization based on justifiable concerns about time and effectiveness. Nonetheless, when provoked or harassed, witnesses may agree to answer inappropriate questions or give misleading information.

V. EVIDENCE FROM EYEWITNESSES: PSYCHOLOGICAL PERSPECTIVE

Every criminal trial requires eyewitness testimony in order to reconstruct events from the past, and eyewitnesses are typically crucial to this effort. Nonetheless, a lot of legal theory and presumptions about the veracity of eyewitness testimony have been challenged by psychologists. The viewpoints that memory reports are frequently plain, i.e., changed by every fascinating addressing, and that witnesses might be persuaded to believe false and inaccurate memories, are particularly prevalent in psychology classics. Since the 1960s, social scientists have demonstrated via several investigations that there is a strong incentive to worry about the veracity of eyewitness testimony. Although a witness can frequently be certain that their memory is accurate when identifying a suspect, the

subjective nature of human memory and visual perception makes eyewitness testimony one of the least reliable forms of evidence. For further information, see the website. These reports can be kept because of their accuracy and certainty because the instances were created by scientists in this direction. Scientists can effectively alter a variety of elements, such as stress, the use of trick questions, etc., to determine what influences accuracy and precision.⁸

An important step in demonstrating the significance of social science for supporting and addressing problems in the legal system is the rise of the scientific literature on eyewitness evidence. A concrete legal framework improvement as a result of this research line includes an increase in the use of eyewitness experts at the preliminary stage, changes to the way eyewitnesses are to be interviewed, and various other considerations that must be made during a legal proceeding involving eyewitnesses.⁹

VI. RELEVANCY OF EYEWITNESSES TESTIMONY: JUDICIAL DECISIONS

There have been various decisions held by the Indian Judiciary which has held that the testimony of eyewitness cannot be solely relied as in a relevant case, the court held that a witness is defined as a person who is able to provide information by oral or written depositions given in the court or otherwise. Generally, a witness is considered to be independent unless acting coercion, fraud or false means.¹⁰ In a recent High Court judgment of Madhya Pradesh, it was held that if an eyewitness account is of the highest caliber, it can serve as the foundation for conviction.¹¹ In another case, Apex Court held that witnesses play important part in criminal justice process. Court made observation that witnesses are crucial to criminal justice process. It was ruled in same case that enacting laws to safeguard witnesses can help ensure fair trial is conducted.¹² In another case, the court held that a witness typically can't be counted on to have photographic memory and remember all specifics of an incident. It's not like video tape is being played again in mind. In most cases, circumstances sweep witness off their feet. So, one cannot assume that mental powers are calibrated to take in details. Each person has unique observational abilities. What one person might observe, another might not. Movement or object may leave an impression on one person's mind while going ignored by another. Expecting witness to act as human tape recorder is unrealistic. Typically, it is unreasonable to expect a witness to precisely recall a series of events that occurred quickly or over a short period of time. A witness may become disoriented or mixed up when questioned afterwards.¹³

⁸ Richard Bauckham, *Jesus and the Eyewitnesses: The Gospels as Eyewitness Testimony* (William B. Eerdmans Pub. Co, Grand Rapids, Mich, 2006).

⁹ Curt R. Bartol and Anne M. Bartol (eds.), *Current Perspectives in Forensic Psychology and Criminal Justice* (SAGE Publications, Thousand Oaks, Calif, 2006).

¹⁰ Madhu Madhuranatha & Anr vs the State Of Karnataka, Criminal Appeal No.1357-1358 of 2011

¹¹ *Manish v. State of Madhya Pradesh*, AIR 2020.

¹² *Vikas Kumar Roorkewal v. State of Uttarakhand*, AIR 2011 (2) SCC 178

¹³ *Bhogin Bhai Kirji v. State of Gujarat*, AIR 1983 SC 753

Hence, sole reliance on the eyewitness testimony for conviction shall prove to be the failure of justice unless corroborated with the other circumstantial evidences. In order to rely on eyewitness testimony, precautionary measures are needed to be taken by the judiciary so that natural and fair decisions are made.

VII. CONCLUSION AND SUGGESTIONS

The trial process heavily relies on eyewitness testimony. In many circumstances, they play a vital part in determining the fate of the accused. Nonetheless, there are a number of factors that contribute to its inconsistency and the making of unfair and unjust choices. Eyewitness testimony is less reliable than precision and forensic science reports because observers can easily be mistaken, although the latter have a lower likelihood of being incorrect. Although eyewitness testimony is a strong kind of evidence for convicting an accused person, it is prone to bias or memory errors. Using an eye witness is solely based on the presumption of truth. Because the eye witness is susceptible to intimidation, bias, persuasion, etc., it isn't totally credible. Dependence on eyewitness testimony frequently results in incorrect convictions. While an eye witness does play a significant role in the trial process, particularly in cases when the entire conviction is based on a single eye witness, the evidential value of an eye witness also rises as it is confirmed by other witnesses' statements, facts, etc. Eyewitness testimonies can be misleading, but forensic reports have a significantly lower risk of being erroneous than DNA reports or other forensic science reports, making them more trustworthy than eyewitness testimony. Unreliable eye witness testimony can lead to false convictions and, ultimately, a miscarriage of justice if variables like memory loss, poor observation, mental shock, and trauma are not taken into account.

As a result, this creates a passage for incorrect convictions and when someone is treated unfairly. If charged, it results in a miscarriage of justice. Moreover, witnesses frequently fear persecution and suffering as a result of which they make false statements or become antagonistic. Also, witnesses can be required for subsequent examinations, which would take a lot of time and money for individuals who live far away, thus they frequently supply fake information to avoid this. In addition to this, a number of additional circumstances, such as improper influence, threat, ulterior motivation, etc., can impair the trustworthiness and accuracy of eyewitness testimony. More specifically, it is frequently incorrect to assume that memory provides an accurate account of comprehension, similar to camcorder. The human mind is flexible. Human memory has developed to give us a sense of who we are as individuals and to guide our actions. We frequently have a tendency to disregard or limit others when viewing our interactions or experiences.