

EXECUTIVE SUMMARY

The present study is about the witnesses; their problems, hostility and assistance. The key objective of the study was to highlight the problems faced by the witnesses in their interaction with criminal justice agencies. Besides, a systematic view has also been taken in this exercise to examine the witness hostility and associated factors. The need and shape of witness protection relevant to Indian context has also been studied.

Apart from using a doctrinal research method to analyze the position of law and judicial response to witnesses, the present study is perhaps the first ever systematic effort in Indian context where the empirical research on a large sample of witnesses has been carried out. With the help of a sample of 798 witnesses in four states i.e. Madhya Pradesh, Rajasthan, Maharashtra, and Karnataka all aspects of witnesses' hostility, protection, problems and assistance have been examined. The witnesses were contacted and intensively interviewed a team of researchers in the premises of courts in the selected districts of the chosen states.

Objectives:

The study was geared to achieve the following objectives:

1. To outline the relevant legal provisions pertaining to witness
2. To examine the issue of hostility of witness and the emerging debates on the issue especially in the light of leading judgments of courts and other publications.
3. To study the experiences and problems of witnesses in their interaction with police, prosecution and court.
4. To critically review the idea of witness protection in the light relevant legal provisions.
5. To study the profile of witnesses in the chosen states.
6. To identify the causes for the reluctance of people being witness to a criminal incident in the context of the characteristics of the witnesses.

7. To survey the perceptions and attitudes of witnesses on certain matters relevant to this study.

Sample & Locale of the Study:

In order to attain the suggested objectives, the witnesses relating to various types of criminal offences have been included in this study. They include (i)Theft (ii)Personal violence (iii)Robbery (iv)Dacoity (v)Attempted murder/murder (vi)Rape

Tools for Data collection:

An Interview Schedule for collecting necessary information from the respondents was devised. As far as possible, all the items kept closed ended so that the respondents could easily answer. The aspects relating to the objectives of the study were properly included. In addition to it, informal discussions with lawyers, prosecutors, police officials and judicial officers were held to gain insight into various aspects of the problem.

The collected data from the respondents were subjected to editing and a coding plan was carried out to facilitate electronic data processing. The data was processed through Statistical Package for Social Sciences (SPSS 13). A tabulation plan suiting to the scheme of this study was worked out.

Chapter Scheme:

The Report is divided into following Chapters.

1. Introduction
2. Legal Provisions dealing with Witness
3. Hostility of Witness
4. Witness protection
5. Profile of Witnesses
6. Study of Witnesses – Issues & problems
7. Attitudes & Perceptions of Witnesses
8. Conclusions & Recommendations

Conclusions:

The key conclusions are presented below:

1. The data collected in this study depict that a considerable number of witnesses covered in this work had higher secondary or above education (58.6 percent). The witnesses with post graduation were increasingly seen in Maharashtra (5.9 percent) followed by Madhya Pradesh (4.9 percent). The number of uneducated respondents was also found least (1.9 percent) in case of Maharashtra.
2. Majority of the respondents in this study (61.7 percent) found the adjournments to be quite frequent. This perception was largely shared by respondents in Rajasthan (19.3 percent) followed by Karnataka (16.7 percent). The highest number of respondents not subscribing to this view came from Maharashtra (12.7 percent) whereas the lowest number in this category came from Rajasthan (0.9 percent).
3. While surveying the attitudes and experiences of witnesses in the present study, 61.7 percent respondents agreed that adjournments take place too frequently and 31.8 percent were not in favour of this view. The respondents in the former category mainly (43.8 percent) belonged to the 'General' category followed by the 'Schedule Tribe' (S.T.) category (31.1 percent).
4. The data reveal that almost 65 percent witness had to appear more than once before the court for testimony while 35.2 percent could do so in the first hearing only.
5. The study noted that majority of the witnesses (40.4 percent) had to come to court two to three times for hearing and 12.4 percent respondents of this class belonged to Rajasthan followed by 11 percent in Maharashtra. The lowest number was seen in this category in the state of Karnataka (7.8 percent).
6. The findings of study critically suggest that the witness with poor or lower educational background had to appear two to three times for hearing in the court as compared to witnesses with graduate and post graduate educational background.

7. The study on the frequency of appearance of witnesses for the hearing shows that the witnesses, had to appear two to three times (40.2 percent) for hearing and only once in 35.2 percent of the cases. Those appeared two-to-three times (40.3 percent) mainly belonged to backward classes (59.7 percent) as against 14.4 percent from general category. This infers that weaker classes were more likely to visit court on more than one occasion.
8. The study shows that the majority of witnesses belonging to the lower medium class (21.9 percent) appeared only once, 19.5 percent appeared two to three times, 8.9 percent appeared four to five times and 3.8 percent appeared six or more than six times. The witnesses belonging to the high medium class appeared six or more times (2.6 percent) and 8.6 percent appeared only once. The witness below poverty line also had repeated appearances in court more than once.
9. In non-cognizable offences, majority of the respondents were required to attend only one hearing (44 out of 57 respondents) as against cognizable offences where the witnesses had to appear more than once before the court.
10. The witnesses had to attend the court more than once in cases like dacoity (73 percent), murder/attempted murder (47.4 percent) and rape (56.3 percent). A few witnesses had to appear for more than six times (N = 73) and they were mainly seen in cases of murder/attempted murder (15.3 percent).
11. The study of nature of pressure exerted upon the witness in four states shows that the respondents undergoing money power (31.7 percent) largely hailed from Maharashtra (10 percent). The witnesses experiencing muscle power (39.1 percent) predominantly belonged to Rajasthan (24 percent). The use of political pressure (3.8 percent) and social pressure (4.6 percent) was also relatively higher in the state of Rajasthan.
12. The findings of this research also suggest that as compared to witness from general category, the witnesses from relatively underprivileged classes were more likely to be pressurized to become witness.

13. As is seen the witnesses are frequently pressurised in the course of their testimony. The study finds that majority (69.8 percent) of the witnesses were pressurized by their acquaintances followed by social pressure (13.4 percent), and only 3.4 percent by money power. Similarly muscle power was also faced by these people in many cases (20.3 percent) as against general classes (19 percent).
14. The study indicates that several types of pressures were used to make the witnesses to twist their statements in the trial. As data suggest the money (31.6 percent) and muscle power (39.3 percent) was predominantly faced by the respondents. Crucially enough, money power was mostly confronted (22.5 percent) by underprivileged classes as against general class (9.1 percent).
15. It can be inferred from the study that witnesses by consent were mostly in property offences and witnesses by pressure were largely concerned with violent offences.
16. The witnesses with relatively poor educational background had excessive chances to be physically pressurised in relation to their testimony. These classes were also seen to have been pressurized, to a large extent, by money power.
17. The study finds that out of 70.9 percent of the subjects who became witness by their consent, about 29.1 percent fell under the age group of 40 to 60 years. With regard to the respondents who became witness due to pressure, 9.5 percent each were from the age groups of 18 to 40 years and 40 to 60 years.
18. The present study finds witnesses experiencing pressures from the accused side and it was found varying according to the nature of cases. The nature of pressure shows that muscle power was greatly exercised (39 percent) and this was mainly used in cases of robbery (50 percent), dacoity (44.4 percent) and rape (47.4 percent). The money power (31.8 percent) was seen to be mainly working in cases of rape (39.5 percent), murder/attempted murder (35 percent) and hurt (34.1 percent).
19. The findings of study suggest that subjects were physically assaulted after being witness (N=308, 39 percent) and these respondents largely

belonged to Rajasthan (20.5 percent) whereas the lowest number in this category was noted in Karnataka (3.7 percent).

20. The data reveal that as many as 70.8 percent witnesses with lower educational background experienced physical assault after being witness. Even among these categories, uneducated respondents figured predominantly (63.4 percent) as sufferers.
21. As the present study finds that in many cases the witnesses were physically assaulted. The study looked into whether the experience of physical assault was a matter linked with any particular age category. This study shows that 38.9 percent witnesses were physically assaulted. Out of these witnesses, 41.0 percent belonged to the age group of 40 to 60 years, and 39.5 percent were from the age group 18 to 40 years.
22. It is also found that witnesses from the 'under privileged category' (22.4 percent) were more likely to face physical assault than the witnesses of 'General category' (16.5 percent). The ST people (14.5 percent) had greater occasion to face manhandling in the category of underprivileged sections.
23. The data collected in this study indicate that those who suffered some loss (39.7 percent) because of being witnesses mainly hailed from Rajasthan (23.9 percent) and the lowest number belonged to Karnataka (3.2 percent).
24. Most witnesses (41 percent) suffered monetary loss due to being witnesses. The uneducated respondents were mainly represented in this category (62.2 percent) followed by witnesses with primary school background (41.4 percent). The experience of loss did not discriminate as highly educated witnesses too suffered similar loss (47.7 percent post graduate and 42.9 percent graduate).
25. It has been found that the witnesses have to suffer loss in their business or service as consequence of their repeated visits and spending of long waiting hours in the court. As many as 89.7 percent suffered loss in their business or service due to the repeated appearances in the court and only 8.1 percent did not suffer any such

losses. It was further seen that the witnesses suffering such losses mainly (43.5 percent) belonged to 'General Caste' followed by S.T. (29 percent).

26. The nature of loss suffered by the witnesses' shows that 40.8 percent witnesses suffered monetary loss, 24.1 percent got entrapped in false cases, 16.7 percent suffered loss of their social status and only 7.8 percent suffered physical loss. The witnesses from the 'underprivileged classes' mostly figured in sufferer's category followed by the witnesses from the general category.
27. Loss and suffering was inevitable for the witnesses as 89.6 percent of the witnesses invariably suffered some kind loss due to hearing. In majority of the cases (49.4 percent), the witnesses belonging to the lower medium class suffered loss in business/service although only 3.5 percent did not suffer any loss. The witnesses belonging to below poverty suffered considerable loss. The witness belonging to upper-class also suffered considerable losses (N = 19).
28. The study shows that majority of the witnesses belonging to the lower medium class (15.9 percent) faced monetary loss, 4.7 percent faced physical loss, 9.2 percent faced loss of social status. Also 15.3 percent felt that they were entrapped in false cases and 4.7 percent suffered other loss.
29. The witnesses belonging to below poverty line faced (6.8 percent) monetary loss, 7 percent faced physical loss, 1.7 percent faced loss of social status, 3.4 percent felt that they were trapped in false cases and 2.4 percent felt that they suffered other losses.
30. The witness with lower level of education were excessively seen (97.8 percent primary school, 95.3 percent middle, 91.6 percent uneducated) to have suffered considerable loss in their business or other work because of hearing in the court. Similarly, the upper level education groups also reported to have suffered loss in almost equal frequencies (87.6 percent post graduate, 79.9 percent graduate).
31. The present study examined the witnesses' satisfaction with police. The findings show that 44.2 percent respondents were satisfied and 31.6

percent were not satisfied and the remaining 24.2 percent were satisfied only to some extent with the police behavior. The witnesses belonging to 'General Caste' showed more satisfaction (43.7 percent) with police behavior than those belonging to weaker sections (7.1 percent). The witnesses who expressed satisfaction with police behaviour mainly belonged to post graduate level (67.5 percent) and graduate (59.8 percent) or uneducated level (42.2 percent). The witnesses sharing dissatisfaction with police predominantly belonged to middle, primary and higher secondary education levels.

32. The relationship between the economic status of witnesses and their satisfaction with the police behavior shows that many witnesses from lower medium (15.2 percent) income groups and below poverty line (8.8 percent) had no satisfaction with the behaviour of police while the upper income groups had relatively lesser dissatisfaction with the police. In all 44.3 percent of the witnesses were satisfied and 31.4 percent of the witnesses were not satisfied with the conduct of police.
33. The study examined relation between age of witness and the satisfaction of witnesses with the working of advocates. Those who were satisfied mostly belonged to the age group of 18 to 40 years (40.6 percent) and age group of 40 to 60 years (39.6 percent).
34. This study looked into as how the witnesses came into contact with the police. The findings show that 33.9 percent respondents gave the information to the police voluntarily, followed by 29 percent were taken by the party concerned. In 16.5 percent and 16 percent cases police themselves contacted the witnesses or called them at police station for statements respectively. Only in 4.1 percent cases, the witnesses were picked up by the police without consent.
35. As many as 24.3 percent witnesses in this study found harassment by the police or court to be a major apprehension and this was relatively frequent in case of Rajasthan (12.4 percent) and was least in Karnataka (3.1 percent).
36. The present study also collected the data concerning the receipt of allowance (batta) by witness for their appearance in the court for

statement. Only 37.2 percent affirmed the receipt of allowance while 23.5 percent did not and 39.3 percent were unsure of any such thing.

37. The relationship between economic status of witnesses and their need for meeting advocate before appearance at court shows that the majority of witnesses belonging to the lower medium class felt the need (29.3 percent) of meeting advocate and 24.4 percent did not feel so. On the other hand, the witnesses belonging to high medium class did not feel the need for meeting (5.6 percent) advocate before their appearance in the court while 19.5 percent did feel so. In total 57.9 percent subjects expressed their desire to meet the advocate and 41.8 percent did not.
38. The findings of study underlines the need for extending security to witness as 42 percent respondents agreed and 31.4 percent strongly agreed that witnesses turn hostile because of insecurity.
39. As many as 44.5 percent respondents held the opinion that hostility stems from complicated judicial procedure and this opinion was mainly seen to be held by the respondents in Maharashtra (12.3 percent) and Madhya Pradesh (11.3 percent).
40. The data reveal that as many as 46.3 percent respondents agreed that hostility was most likely to take place in cases where the accused was economically strong. As many as 40.6 percent respondents in Maharashtra and 12.5 percent in Madhya Pradesh subscribed to this notion.
41. The social position of the accused was seen to be instrumental in causing hostility of witness. The data suggest that 44.5 percent agreed to this notion and 14.2 percent of them belonged to Maharashtra and almost equal number belonged to Madhya Pradesh and Karnataka.
42. The respondents in this study agreed (39.6 percent) or strongly agreed (15 percent) to the fact that where the accused had a criminal record the witnesses were more likely to go hostile.
43. Many witnesses turn hostile as they have the perception that there is a nexus between police and accused. As many as 41.3 percent respondents agreed and 22 percent strongly agreed to this statement.

44. The witnesses also tend to believe that hostility takes place due to perceived nexus between the public prosecution and accused. A large number of respondents (44 percent) were uncertain of this point. However 38.2 percent were agreed and 11.2 percent strongly agreed on this statement.
46. The planted witnesses are designed to go hostile. As many as 29.6 and 27.4 percent respondents in this study agreed and strongly agreed to this fact.

Recommendations of the Present Study¹

There is need to understand the entire range of issues pertaining to witness in a cohort as they are interconnected matters. The present study does recommend the need to evolve a comprehensive policy and legislation for the matters related to witness demands the reconsideration of shape of legislations proposed by the Law commission for want of certain reasons already mentioned at (71-73).

To be pragmatic and workable, the implementation of recommendation will have to be governed by certain limitations. There can be three major considerations or prerequisites in this regard.

1. In order to handle the issues relating to witnesses like hostility, protection and assistance, fresh structural and legislative arrangements would be required which will have sizeable financial implications for the states.
2. All the witnesses cannot be provided with protection cover due to practical limitations. The need therefore would be to identify and prioritize the case where the protection is quite essential.
3. What is immediately possible is to ensure that the police, prosecution and judicial officials start showing little sensitivity in dealing with witnesses so that the attitudinal and harassment matters could be

¹ A summarized version of key recommendations made by the Law Commission and others are at 'Annexure' II

minimized and the element of assistance to witness could be emphasized at all stages of trial.

Some key recommendations of the present study are as under:

I National Policy for Witness Assistance and Protection

1. It is recommended that a comprehensive 'National Policy for Witness Assistance & Protection' should be evolved and which should be widely debated and be finally culminated into a 'legislation'.
2. The proposed legislations may be called 'Witness Protection and Assistance Act'.
3. The issues of witness identity protection, witness protection, hostility and witness assistance are the part of larger problems that the criminal justice in India faces today. It is therefore recommended that all these matters should be dealt in one legislation.

II Network of Agencies & Coverage of scheme

1. A 'Victim-Witness Assistance Department' with the state government may be set up to assess the protection requirement and assistance issues to the witnesses. It is imperative that such an organization should be autonomous and should consist of trained and skilled personnel.
2. The benefit of witness protection and assistance as may be envisaged under the suggested legislation be extended to prosecution and defence witnesses and a person who was accomplice in crime but desires to be witness for the state.
3. While assistance may be extended to all witnesses, the protection may be extended to only 'eligible' witnesses. This could be determined on the basis of threat perceptions and nature of case etc.
4. While the issue of hostility needs to be dealt under the proposed legislation, the character of this law should not be predominantly criminal or punitive as the factors making the witness hostile mostly stems from grievances and problems that the witness invariably faces.

Hence, the mandate of this legislation should be problem solving and assistance rendering.

III Rights of Witness

It is also recommended that the witness should be provided with certain rights to ensure him a fair deal in the criminal justice process and to protect him from any intimidation or undue pressure. The following may be some basic rights to be guaranteed under the proposed legislation for witness.

- i) right to give evidence anonymously;
- ii) right to protection from intimidation and harm;
- iii) right to be treated with dignity and compassion and respect of privacy;
- iv) right to information of the status of the investigation and prosecution of the crime;
- v) right to be present at and, upon request, to be informed of all criminal proceedings where the accused has the right to be present;
- vi) right to be heard at the time of the granting of bail to the accused and sentencing;
- vii) right to be conferred with the prosecution, after the crime against the victim has been charged, before a criminal court;
- viii) right to information on medical facilities, social services, state crime compensation, and programmes which provide counseling, treatment and other support;
- ix) right to seek guidance from police and prosecution in making the statements properly;
- x) right to secure waiting place while at Court proceedings;
- xi) right to transportation and lodging arrangements.

IV Procedural matters:

1. The spirit behind section 309 of Cr. P. C. must be realized in true sense by the court which requires that once the examination is started, the court has to continue the trial until all witnesses in attendance have been examined. The adjournment should only be exercised in exceptional situations.

2. The witness who is present in the court should be examined on the same day and reasons, if any, for not doing so must form the part of record.
3. The accused or defence counsel seeking adjournments should be necessarily made to bear the cost of loss and bail in such case may also be cancelled.
4. In order to avoid unnecessary adjournments, the close monitoring of trial process is highly called for and it may be done through computer networking.
5. The security concern or any pressure situation in case of witness must be assessed by the prosecution before trial and the trial court should also be appraised of same at appropriate time.
6. The statement recorded by the police should be read over and sign or thumb impression of witness should be taken and the copy statement should be submitted to senior officials.
7. The statement of the witness duly recorded before Magistrate under oath, in the discretion of the Court, be treated as evidence
8. The perjury laws and specially sections 344 of Cr. P. C. and 193, 195,196,199 of IPC be invoked wherever the Courts suspect the instances of willful and malicious twisting of statements. The non-compliance in such cases must be viewed seriously.
9. It is also recommended that the entire truth of hostility must be unearthed so that in the event of any pressure or intimidation the culprits must be taken to the task by the laws.
10. The award of bail to the accused should also be contingent upon the security concerns of the witness.
11. The witness ought to be informed if the accused is granted the bail.

12. The identity of witness should be kept secret in the judgment even when the copies and documents are supplied to the accused under as per the procedure of law.
13. The witness should not suffer a disqualification or discontinuance from his/her employment and this should be notified through a certificate to be issued by the court.
14. In case of harm suffered by the witness as result of being witness by the accused side, adequate quantum of compensation should be admissible to him from the state.
15. The identity protection for witnesses must be considered well before the charge sheeting the case. The stage (of investigation or trial) and the manner of protection (relocation, video application, tele-linked procedure of statement etc.) must be considered with specific care and strictly according to the individual needs of witness.
16. The state should bear the expenses to be incurred on witness protection measures.

V Systemic Approach

1. The present study underlines that in no study reports the role of police vis-à-vis witness has been emphasized. It is therefore recommended that some guidelines indicating the obligations of police and prosecutors must be formulated.
2. The criminal justice agencies specially the police and prosecution must act in a manner so that the rights of witnesses proposed in the study could be realized.
3. This is high time to adopt certain features of 'inquisitorial' system of trial into the 'adversarial' system, namely "empowering judges further with the duty of leading evidence with the object of seeking the truth and focusing on justice to victims." This during trial would go a long way in protecting witnesses.

4. The study finds over reliance of criminal justice system on witnesses has complicated the situation. The need is to explore advanced forensic applications and technological facilitation in the investigation and trial process so that excessive dependence of police and judiciary on witnesses could be reduced.
5. It is recommended that the spirit of the U.N. Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985² be captured to make our laws and relevant provisions of procedural laws more witness oriented and more so where the victim also figures as witness.
6. Some arrangements of guidance to witness through NGOs or other appropriate bodies may be made available enabling him to understand the importance of his role and the manner in which he could offer his statement.
7. This study also recommends that mere punishment will not resolve the issue of hostility as this matter is a part of larger problem that the criminal justice system in India is facing. This requires taking up the major reforms needed in criminal justice process.

Many areas identified in this study are in need of further in-depth research. The need for a comprehensive policy and legislation dealing with witnesses is highly called for in India.

² It is under revision to become a 'Convention' and in its revised form it more clearly includes witnesses in its purview.