

Hostile Witnesses and The Crisis of Prosecutorial Proof: A Critical and Comparative Empirical Analysis of Sessions Courts in Aligarh and Hathras Districts, Uttar Pradesh

Nidhi Arya

Research Scholar

Prof. (Dr.) Rekha

Institute of Legal Studies & Research,
Faculty of Law, Mangalayatan University,
Beswan, Aligarh, Uttar Pradesh, India

ABSTRACT

Witnesses are indispensable to the truth-finding function of the adversarial criminal trial in India, yet an increasing tendency among prosecution witnesses to resile from their earlier statements the phenomenon of the 'hostile witness' — has become one of the most persistent impediments to effective criminal adjudication. Neither the Indian Evidence Act, 1872, nor the Code of Criminal Procedure, 1973, defines the term 'hostile witnesses, leaving its content to judicial interpretation under Sections 154 and 155 of the Evidence Act. This article undertakes a doctrinal and empirical examination of the problem, drawing on a comparative field study of fifty acquittal judgments each from the Sessions Courts of Aligarh and Hathras districts, Uttar Pradesh, for the period 2018–2024, supplemented by structured interviews of one hundred respondents in each district. The analysis finds that, on average, hostile testimony was recorded in 13–14 per cent of prosecution witnesses examined in acquittal cases across both districts, with victims, complainants and panch (independent) witnesses forming the most vulnerable categories, and offences against the human body particularly murder, attempt to murder, and sexual offences recording the highest incidence of hostility. Six hypotheses concerning witness cooperation, legal reform, socio-cultural variation, victim participation, technology, and procedural reform are tested against the doctrinal and empirical material. The article concludes that witness hostility is a systemic, cross-district phenomenon rooted in fear, social proximity, procedural delay and inadequate witness welfare rather than a mere function of caseload, and it proposes police, judicial, and legislative measures including a comprehensive Witness Protection Act, statutory recognition of the term 'hostile witness', wider use of Section 164 CrPC statements, and institutional witness-welfare mechanisms to strengthen witness cooperation and the integrity of criminal trials in India.

Keywords: hostile witness; Indian Evidence Act, 1872; Section 154; criminal justice system; Sessions Court; witness protection; acquittal; prosecution evidence.

1. INTRODUCTION

Jeremy Bentham famously described witnesses as "the eyes and ears of justice." In an adversarial system of criminal justice such as India's, where the burden of proof rests squarely on the prosecution, the oral testimony of witnesses forms the evidentiary backbone of every criminal trial. Section 118 of the Indian Evidence Act, 1872, presumes all persons competent to testify, and Section 119 extends this competence even to those unable to speak. Yet, despite the centrality assigned to witnesses by law, the recurring spectacle of prosecution witnesses turning against the very case they were called to support as dramatically illustrated in the Jessica Lal murder case, the Best Bakery case, and the Priyadarshini Mattoo case has exposed a deep structural vulnerability in the administration of criminal justice.

The term "hostile witness" has no statutory definition in Indian law. It is a judicially evolved concept rooted in English common law, where a distinction was drawn between an "adverse" witness one whose testimony merely disappoints the calling party's expectation and a "hostile" witness, whose manner of deposing reveals an unwillingness to tell the truth to the court. Indian courts, from the Karnataka High Court in *Dada Buddappa Gouli v. Kalu Kanu Gouli* to the Punjab and Haryana High Court in *Karaj Singh v. Amarjit Kaur*, have repeatedly cautioned that a witness cannot be branded hostile merely because his evidence is unfavorable to the party calling him; hostility requires an intent to injure the case by prevaricating or suppressing the truth. This conceptual ambiguity, combined with the absence of an effective statutory witness-protection framework, has allowed the problem to grow largely unchecked.

This article revisits the doctrinal position of the hostile witness under Indian law and situates it within an original comparative empirical study of Sessions Court acquittals in two contrasting districts of Uttar Pradesh — Aligarh, a larger, more urbanised district with a heavier case volume, and Hathras, a smaller, predominantly rural and semi-urban district. The comparative design allows the study to test whether witness hostility is primarily a function of case volume and urban complexity, or whether it is a structural feature of the criminal trial process that persists irrespective of district-level demographic and administrative differences.

2. CONCEPTUAL EVOLUTION AND JUDICIAL TREATMENT OF THE HOSTILE WITNESS

Under English law, three categories of witnesses were traditionally recognised favorable, unfavorable, and hostile. Justice Wilde is credited with distinguishing the "adverse" witness from the "hostile" witness on the ground that the latter's demeanor itself betrays an unwillingness to

speak the truth, a distinction later refined by Chief Justice Porter in *Wawanesa Mutual Insurance Co. v. Hanes*, who observed that "hostile" is a broader category than "adverse," encompassing any witness whose interests align against the party that called him. The Black's Law Dictionary defines a hostile witness as one who is "biased against the examining party, who is unwilling to testify, or who is identified with an adverse party."

In India, the absence of a statutory definition has meant that the content of the concept is drawn almost entirely from Sections 154 and 155 of the Indian Evidence Act, 1872, which empower a party to cross-examine and impeach the credit of its own witness with the court's permission, and from a substantial body of case law. In *Swaran Singh v. State of Punjab*, the Supreme Court underscored that a criminal case is built on admissible evidence, whether direct or circumstantial, and that the credibility of witnesses is central to that edifice. The 2013 2G spectrum case, in which a prominent industrialist was declared hostile after resiling from his Section 161 CrPC statement on the ground of memory lapse, illustrates how the phenomenon cuts across social strata and case types, from ordinary criminal trials to matters of significant public interest. The judiciary has consistently held that mere unfavorable testimony does not, without more, render a witness hostile; there must be a demonstrable intent to injure the calling party's case by prevarication or suppression of the truth.

3. STATEMENT OF THE PROBLEM, OBJECTIVES AND HYPOTHESES

The study is animated by the concern that, without resolving the underlying causes of witness hostility, the cooperation necessary for a free and fair trial cannot realistically be secured. Accordingly, the study sought: (i) to outline the legal provisions relevant to witnesses in India; (ii) to analyse witness hostility through key judicial pronouncements and academic literature; (iii) to evaluate witness interaction across the different stages of the criminal justice process; (iv) to identify, through field data from Aligarh and Hathras, the reasons underlying witnesses' reluctance to testify; and (v) to understand witnesses' perceptions and attitudes on matters germane to their cooperation.

Six hypotheses were formulated for empirical and doctrinal testing: (H1) witness cooperation significantly affects the outcome of criminal cases; (H2) recent legal reforms have improved witness cooperation; (H3) witness cooperation varies significantly across cultural and regional contexts; (H4) witness hostility significantly reduces victims' willingness to participate in the criminal process; (H5) technological tools such as video-conferencing significantly improve

witness cooperation; and (H6) procedural reforms have a significant impact on witness behaviour during legal proceedings.

4. RESEARCH METHODOLOGY

The study adopts a mixed doctrinal and non-doctrinal (empirical) design. The doctrinal component traces the jurisprudential development of the hostile-witness concept through statute, leading judgments, and the reports of law commissions and expert committees. The empirical component comprises two elements. First, a sample survey using a structured interview schedule was administered to one hundred respondents each in Aligarh and Hathras districts, covering witnesses, lawyers, prosecutors, police personnel and court officials. Second, and forming the core comparative dataset for this article, an independent doctrinal-empirical analysis was conducted of fifty acquittal judgments delivered between 2018 and 2024 in each of the two Sessions Courts, examining the number of prosecution witnesses examined, the number and category of witnesses declared hostile, the offence charged, and the reasons recorded for acquittal. The equal sample size across the two districts was designed to preserve methodological parity and strengthen the validity of the comparative inferences drawn.

5. LEGAL FRAMEWORK GOVERNING HOSTILE WITNESSES IN INDIA

The statutory architecture bearing on hostile witnesses is scattered rather than consolidated. Section 118 of the Evidence Act establishes a general presumption of competence to testify; Section 119 extends this to witnesses unable to speak. Sections 154 and 155 permit a party, with leave of the court, to cross-examine and impeach the credit of its own witness the principal doctrinal foundation on which the hostile-witness practice rests, notwithstanding the absence of the term "hostile witness" anywhere in the text of the Act. Section 161 of the Code of Criminal Procedure, 1973, governs the recording of witness statements by police during investigation, while Section 164 CrPC permits statements to be recorded before a Magistrate on oath, a safeguard the study finds is significantly under-utilized outside a narrow category of grave offences. Section 193 of the Indian Penal Code criminalizes perjury, yet the study's doctrinal review confirms that prosecutions for resiling from a Section 164 statement remain rare in practice. The Supreme Court's directions culminating in the Witness Protection Scheme, 2018, represent the most significant institutional response to date, providing for identity protection, relocation, police protection and in-camera proceedings; however, the Scheme's implementation was delayed well beyond the one-year timeline fixed by the Supreme Court, was not

operationalised until March 2020, and remains confined to threat and intimidation, without addressing inducement or other indirect means of subverting a witness's testimony.

6. COMPARATIVE EMPIRICAL ANALYSIS: SESSIONS COURTS OF ALIGARH AND HATHRAS (2018–2024)

6.1 Incidence of Hostile Witnesses

In Aligarh, out of fifty acquittal judgments studied for the period 2018–2024, 364 prosecution witnesses were examined, of whom 47 were declared hostile an overall incidence of 13 per cent, with a peak of 28.95 per cent in a single year and considerable year-on-year fluctuation rather than a steady decline. In Hathras, across the same fifty-judgment sample, 351 prosecution witnesses were examined, of whom 62 turned hostile, yielding a marginally higher average incidence of 14.28 per cent, with a low of 9.67 per cent and a high of 19.35 per cent. The comparable proportional incidence across a larger, more case-heavy district and a smaller, predominantly rural district support the study's central inference that witness hostility is not merely a function of case volume, but is rooted in the operation of the criminal trial process itself.

District	Acquittal Cases Examined	Prosecution Witnesses Examined	Witnesses Turning Hostile	Average % Hostile
Aligarh	50	364	47	13.00%
Hathras	50	351	62	14.28%

Table 1: Comparative incidence of hostile witnesses in acquittal cases, Aligarh and Hathras Sessions Courts, 2018–2024 (Source: primary data compiled from Sessions Court judgments).

6.2 Classification of Hostile Witnesses

Classifying hostile witnesses by category reveals a broadly consistent pattern across both districts, with victims and complainants forming the largest vulnerable group, followed closely by panch (independent) witnesses. In Aligarh, victims accounted for 27.66 per cent of hostile witnesses, panch witnesses for 21.28 per cent, independent witnesses for 19.15 per cent, complainants for 17.02 per cent, related/interested witnesses for 8.51 per cent, and eyewitnesses for 6.38 per cent. In Hathras, victims accounted for 29.03 per cent of hostile witnesses the single largest category followed by pancha witnesses at 16.12 per cent, complainants at 15.51 per cent, independent witnesses at 17.74 per cent, eyewitnesses at 11.29 per cent, and related/interested witnesses at 11.29 per cent.

Category of Witness	Aligarh (%)	Hathras (%)
Victim	27.66	29.03
Pancha / Independent Witness	21.28	16.12
Independent Witness (other)	19.15	17.74
Complainant	17.02	15.51
Related / Interested Witness	8.51	11.29
Eye-Witness	6.38	11.29

Table 2: Classification of hostile witnesses by category, Aligarh and Hathras Sessions Courts, 2018–2024 (Source: primary data).

The predominance of victim hostility in both districts is significant: since the victim is frequently the principal evidentiary anchor of the prosecution case, his or her withdrawal of support almost invariably precipitates acquittal. The comparative data further shows that panch witnesses who are meant to serve as neutral, independent observers of the investigative process such as the panchnama exhibit a marked and troubling tendency to resile, often on the ground that they were unaware of the contents of the document they had signed, or because of their informal association with the investigating police.

6.3 Offence-wise Distribution of Hostility

The offence-wise analysis in Aligarh shows that hostility is heavily concentrated in offences against the human body: attempt to murder (Section 307, IPC) recorded a 38.30 per cent share of hostile witnesses, followed by sexual offences at 25.53 per cent, murder (Section 302, IPC) at 10.64 per cent, and abetment to suicide (Section 306, IPC) at 8.51 per cent. Among property offences, dacoity recorded 12.77 per cent a proportion exceeding that of murder while offences under the Protection of Children from Sexual Offences Act, 2012, accounted for 8.51 per cent, and cruelty by husband or relatives under Section 498-A, IPC, for 4.26 per cent. This pattern indicates that the gravity and social sensitivity of an offence, rather than its classification as a property or bodily offence per se, is the stronger predictor of witness hostility offences carrying social stigma (sexual offences), organised threat (dacoity), or intra-family reconciliation pressure (matrimonial cruelty, dowry death) are disproportionately associated with resiling testimony.

7. HYPOTHESIS TESTING AND DISCUSSION

Read together, the doctrinal review and the comparative field data permit the following conclusions on the six hypotheses framed for the study.

- H1 (Witness Cooperation and Case Outcomes): The null hypothesis is rejected. Both the acquittal judgments studied and the wider body of case law confirm that witness cooperation is a decisive determinant of trial outcomes; acquittals in the sample were overwhelmingly attributable to the withdrawal of witness support rather than to an absence of underlying evidence.
- H2 (Legal Reforms and Witness Cooperation): The null hypothesis is rejected. The Witness Protection Scheme, 2018, and associated judicial directions mark a genuine, if incompletely implemented, doctrinal advance in the recognition of witness protection as an incident of the right to a fair trial.
- H3 (Cultural and Regional Variation): The null hypothesis is rejected. While the aggregate incidence of hostility is comparable across Aligarh and Hathras, the qualitative texture of hostility differs sharply Aligarh's hostility is more associated with organised threat and factional conflict, while Hathras's is more embedded in close-knit community and family pressure confirming that regional and cultural context materially shapes witness behaviour.
- H4 (Victim-Witness Impact): The null hypothesis is rejected. Victim hostility, the single largest category in both districts, is shown to erode the confidence of other victims and witnesses in the efficacy and safety of the trial process, feeding a wider culture of non-cooperation.
- H5 (Technology and Witness Cooperation): The null hypothesis is rejected. Video-conferencing and electronic recording of testimony are found, on doctrinal review, to reduce the fear, inconvenience and exposure associated with physical courtroom appearance, particularly for vulnerable witnesses.
- H6 (Procedural Reforms and Witness Behaviour): The null hypothesis is accepted with qualification. While heightened judicial sensitivity to witness dignity and time-bound trial procedures correlate with improved testimonial confidence, the study finds that procedural reform alone has not been sufficient to eliminate the systemic drivers of hostility, underscoring the need for the police, judicial, and legislative measures set out below.

8. KEY FINDINGS

The comparative analysis establishes that witness hostility is a systemic, cross-district phenomenon in the Sessions Courts of Uttar Pradesh, occurring at a broadly comparable proportional rate irrespective of case volume or degree of urbanization. Victims, complainants

and panch witnesses form the categories most vulnerable to hostility; offences against the human body, particularly attempt to murder and sexual offences, record the highest incidence of resiling testimony; and prolonged trials, repeated adjournments, and the absence of meaningful witness-welfare mechanisms compound the fear, social pressure and procedural fatigue that drive witnesses away from their earlier statements. Judicial reasoning in both districts recognizes the crippling evidentiary consequence of a star witness turning hostile, yet remains constrained by the requirement of proof beyond reasonable doubt, leaving courts with limited room to salvage a prosecution case once central testimony is withdrawn.

9. SUGGESTIONS AND RECOMMENDATIONS

9.1 Suggestions to the Police

- Investigating officers, jointly with Public Prosecutors, should refresh witnesses' memory before deposition and familiarize them with court procedure to build confidence.
- The use of stock or habitual panch witnesses during panchnama should be discontinued in favor of independent or government-employee witnesses, or reliance on photographic and video graphic documentation.
- Statements of material witnesses under Section 161 CrPC should be recorded promptly, and audio-video recording of such statements should be adopted to reduce embellishment.
- The concerned Investigating Officer should, so far as possible, remain associated with a case through trial, and officers should receive structured training on courtroom testimony and best investigative practice.

9.2 Suggestions to the Judiciary

- Adjournments should not be granted when a witness is present and ready to depose, except in rare and recorded circumstances, and depositions should ordinarily be completed the same day.
- Courts should ensure that accused and witness are not confronted face-to-face where intimidation has been reported, and Section 195-A, IPC (threatening a witness) should be more actively invoked.
- Sessions trials should be conducted within a defined time frame, with statements of material witnesses recorded early in the trial to limit the accused's opportunity to influence them.

- Perjury proceedings under Section 193, IPC, should be initiated, and conducted as expeditious summary trials, against witnesses who resile from statements recorded on oath under Section 164 CrPC
- Video-conferencing facilities should be more widely used to record the testimony of vulnerable witnesses without requiring their physical presence in the courtroom.

9.3 Suggestions to the Government/Legislature

- The identity and address of prosecution and panch witnesses should be statutorily protected through amendment of Sections 173 and related provisions of the CrPC and the Model Form of Charge Sheet.
- The recording of statements of material witnesses on oath before a Magistrate under Section 164(5) CrPC should be extended to all Sessions cases, at least for offences against the human body and property.
- A centralized database of hostile witnesses recording the offence, category of witness, and circumstances of hostility should be maintained by the court registry and shared with prosecuting and police authorities to enable pattern analysis and monitoring.
- Parliament should enact a comprehensive Witness Protection Act extending beyond the 2018 Scheme's focus on threat and intimidation to also address inducement, and covering offences punishable with ten years' imprisonment, life imprisonment, or death.
- The Indian Evidence Act, 1872, should be amended to statutorily define 'hostile witnesses, building on the implicit basis presently found in Section 154.
- Travel and subsistence allowances for witnesses should be enhanced, witness waiting rooms should be provided at court premises, and private-sector employers should be statutorily required to grant paid leave to employees summoned as witnesses.

10. CONCLUSION

The problem of the hostile witness sits at the intersection of doctrine and social reality. India's adversarial criminal process places extraordinary evidentiary weight on the oral testimony of witnesses, yet its statutory framework offers no definition of the phenomenon that most threatens that testimony's reliability, and its institutional response principally the Witness Protection Scheme, 2018 has been slow to implement and narrow in scope. The comparative empirical study of the Sessions Courts of Aligarh and Hathras demonstrates that witness hostility is not confined to large, case-heavy urban districts but recurs at a comparable rate in smaller, rural settings, driven less by case volume than by fear, social proximity, procedural delay, and the absence of

meaningful witness welfare. Victims, complainants and independent panch witnesses emerge as the categories most exposed to this hostility, and offences involving grave bodily harm or sexual violation as the contexts in which it is most consequential for the prosecution's case. Strengthening witness cooperation in India's criminal justice system will require coordinated reform across police practice, judicial case-management, and legislation most urgently, the enactment of a comprehensive Witness Protection Act and the statutory recognition of the hostile witness so that the promise of a fair and effective trial is not defeated at the threshold by the erosion of the very testimony on which it depends.

REFERENCES

1. **Chakrabarthi, N.K. (1999).** Institutional Corrections in the Administration of Criminal Justice. New Delhi: Deep & Deep Publications Pvt. Ltd.
2. **Chandrasekharan, K. N. (2008).** Public prosecution in India. Paper presented at the 4th Asian Human Rights Consultation on the Asian Charter of Rule of Law, Hong Kong.
3. **Chauhan, B., & Srivastava, M. (2011).** Change and Challenges for Indian Prison Administration. The Indian Police Journal, LVIII(1), 69–86.
4. **Diaz, S. M. (1976).** New Dimensions to the Police Role and Functions in India. Hyderabad: National Police Academy.
5. **Ganguly, T. K. (2009).** A Discourse on Corruption in India. New Delhi: Alp Books Publications.
6. **Gautam, D. N. (1993).** The Indian Police: A Study in Fundamentals. New Delhi: Mittal Publications.
7. **Kelkar, R. V. (1998).** Lectures on Criminal Procedure. Lucknow: Eastern Book Company.
8. **Krishna Iyer, V. R. (1980).** Justice and Beyond. New Delhi: Deep & Deep Publications.
9. **Krishne Mohan, M. (1994).** Indian Police: Roles and Challenges. New Delhi: Gyan Publishing House.
10. **Nehad, A. (1992).** Police and Policing in India. New Delhi: Common Wealth Publishers.
11. **Nitai, R.C. (2002).** Indian Prison Laws and Correction of Prisoners. New Delhi: Deep & Deep Publications Pvt. Ltd.
12. **Raghavan, R. K. (1989).** Indian Police: Problems, Planning and Perspectives. New Delhi: Manohar Publication.

13. **Saha, B. P. (1990).** Indian Police: Legacy and Quest for Formative Role. Delhi: Konark Publishers Private Limited.
14. **Sen, S. (1986).** Police Today. New Delhi: Ashish Publishing House.
15. **Sethi, R. B. (1983).** The Police Acts. Allahabad: Law Book Co.
16. **Shankardass, R. D. (2000).** Punishment and the Prison: Indian and International Perspectives. New Delhi: Sage Publications.
17. **Thilagaraj, R. (1988).** Role of Police, Juvenile Court and Correctional Institutions in the Implementation of Juvenile Justice Act 1986. Journal of the Madras University, LX, 44–48.
18. **Thilagaraj, R., & Varadharajan, D. (2000).** Probation: Approach of the Indian Judiciary. The Year Book of Legal Studies (Vol. 23). Chennai: Directorate of Legal Studies.
19. **Trivedi, B. V. (1987).** Prison Administration in India. New Delhi: Uppal Publishing House.
20. **Walmsley, R. (2008).** World Prison Population List. London: King's College.
21. **Weiner, M. (1991).** The Child and the State in India: Child Labour and Education Policy in Comparative Perspective. Princeton: Princeton University Press.
22. **Swaran Singh v. State of Punjab, (2000) 5 SCC 668.**
23. **Dada Buddappa Gouli v. Kalu Kanu Gouli and Another, AIR 1978 Kant 159.**
24. **Karaj Singh v. Amarjit Kaur and Ors, (2005) 4 SCC 228.**
- Aneek Singh v. State of Uttar Pradesh.
- The Indian Evidence Act, 1872.
- The Code of Criminal Procedure, 1973.
- The Indian Penal Code, 1860.
- The Protection of Children from Sexual Offences Act, 2012.
- Witness Protection Scheme, 2018 (Government of India).