

# Truth On Trial: Hostile Witnesses and Undertrial Prisoners in India

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## ARTICLE INFO ABSTRACT

The legal structure governing undertrial detainees in India is essentially based on the rights guaranteed by the Constitution, as well as several statutory measures designed to ensure justice and legal help for individuals awaiting trial. The Indian Evidence Act of 1872 established the notion of hostile witnesses and the legal framework under which they are treated in India. This legislation marked a watershed moment in the formation of India's legal system, as it was enacted during British colonial authority to simplify the intricacies of evidentiary processes that were previously governed by local conventions and traditions. The issue of hostile witnesses is more than just courtroom evidence; it underscores broader issues about witness safety and the viability of India's judicial system. The appearance of a hostile witness can significantly impair the prosecution's case, especially if the witness' evidence is critical to determining guilt. A hostile witness may be viewed as untrustworthy, prompting the court to question the credibility of their claims and thus damaging the prosecution's case. In contrast, for the defense, a hostile witness might bring both obstacles and possibilities. While the defense may struggle to obtain cooperative testimony, they might use the witness' antagonism to undermine their credibility and the prosecution's account of events. Overcrowding is a prevalent issue in Indian prisons, with occupancy rates frequently exceeding official capacity. According to recent data from the National Crime Records Bureau (NCRB), India's jails are 118% overcrowded, with facilities housing more criminals than anticipated. Overcrowding is especially prevalent in areas such as Uttar Pradesh, Maharashtra, and Bihar. Such situations exacerbate inmate tensions, deplete resources, and jeopardize security, sanitation, and health standards.

**Keywords:** Indian Evidence Act, Witness Reliability, Hostile Witness, Witness Protection Scheme

## INTRODUCTION

Witness reliability is critical in criminal justice and the courtroom. Indian courts use witness testimony to determine guilt or innocence. The Indian Testimony Act, 1872, and the Code of Criminal Procedure, 1973, analyse, assess, and apply witness testimony in criminal trials. Not every witness is trustworthy. Memory, perception, and recollection are flawed and susceptible to psychological and environmental influences that may influence a witness's testimony. Witness testimony is hampered by India's distinct socio-cultural context, in which social pressures, intimidation, and lengthy trials can all have a significant impact on a witness's desire or capacity to provide honest and consistent testimony.<sup>3</sup> The Indian justice system recently acknowledged witness credibility difficulties. This awareness has resulted in legal and procedural improvements to improve witness credibility and rights. The 2018 Witness Protection Scheme and videoconferencing for testimony show a growing understanding of difficult witness reliability issues. Witness

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<sup>3</sup> Malik, N. (2024). WITNESS RELIABILITY IN CRIMINAL TRIALS. *Shodh Kosh Journal of Visual and Performing Arts*, [online] 5(7). doi:<https://doi.org/10.29121/shodhkosh.v5.i7.2024.2279>.

credibility is still an important legal issue in Canada's changing criminal justice system. The endeavor to combine the accused's rights with the requirement for honest and trustworthy testimony while also protecting witnesses' safety and dignity is continuing. This introduction serves as a foundation for a more in-depth examination of witness reliability, the legislative framework governing witness evidence, and the enhancements and processes being introduced to improve witness accounts in Indian criminal cases. Concept of Witness in India, the adversary system of adjudication is used, in which two parties present their claims and evidence to the Court, and the presiding officer is responsible for rendering the judgment. Thus, this system is sometimes referred to as *lis inter partes*. I believe "evidence," whether oral or documentary is a method of establishing the claim requisitioned by the Court. In a criminal case, oral evidence under Section 60 of the Indian Evidence Act, 1872 includes testimony from eyewitnesses, hearers, senses, and those with opinions on the crime. By the introduction of new evidence act "Bharatiya Sakshya Adhiniyam, 2023" (BSA) now the "Hostile Witness" have been defined under Section 157 of BSA.

### LEGAL SAFEGUARDS AND CHALLENGES IN WITNESS TESTIMONY IN INDIA

The relationship between hostile witnesses and undertrial detainees is intricately linked in the Indian criminal court system. Individuals awaiting trial who have not yet been convicted are frequently placed in risky situations that jeopardize their right to a fair trial. An incredible 76% of all prison inmates in India are undertrials, with many coming from low-income families, making it difficult for them to obtain bail and access legal resources efficiently. Many undertrial detainees are accused of minor offenses and cannot afford legal representation or bail, resulting in extended durations of incarceration without trial. During this period, individuals are frequently subjected to harsh conditions such as overcrowding and insufficient medical care, which can aggravate their mental and physical health problems. This climate not only violates their rights, but also creates a breeding ground for intimidation and coercion, which might impact witnesses' testimonies in their cases. Many undertrial detainees are charged with minor charges and cannot afford legal representation or bail, resulting in extended periods of detention without trial. During this time, people are usually forced to harsh conditions including overcrowding and limited medical care, which can exacerbate their mental and physical health issues. This climate not only infringes human rights, but it also fosters intimidation and coercion, which may influence witnesses' testimonies in their cases.

Article 21 of the Indian Constitution states that no one shall be deprived of life or personal liberty unless in compliance with the law. Despite this provision, data from the National Crime Records Bureau (NCRB) show an increase in mortality among prisoners awaiting trial, exposing severe failures to protect personal freedoms. The Criminal Procedure Code was revised in 2005 to address long-term incarceration by permitting undertrial offenders to be freed on personal bonds after serving half of the maximum sentence for their alleged crimes. However, this rule does not apply to serious offenders, and many undertrials remain in overcrowded and unhygienic conditions. The condition of undertrial prisoners is aggravated by systemic concerns such as insufficient legal representation and a shortage of judges and prosecutors. Furthermore, a lack of cooperation among several sectors of the government frequently results in lengthy detentions. There is an urgent need for change, including the development of separate facilities for undertrial detainees and increased proximity of detention institutions to courts to assist quick legal proceedings.

Witness credibility is critical for India's criminal justice system. The Indian testimony Act of 1872 governs witness testimony admission and appraisal, but understanding its trustworthiness is critical. The psychological, social, and environmental aspects all have an impact on criminal trial witness credibility and accuracy. Witness reliability is affected by fallible memory and perception. Several Indian court rulings have acknowledged that human memory is flawed and influenced by a variety of events. False recollections can also have an impact on witness reliability. According to research, leading questions can either influence or generate memories. Most Indian police investigations involve multiple rounds of questioning. Witness credibility is critical for India's criminal justice system. The Indian testimony Act of 1872 governs witness testimony admission and appraisal, but understanding its trustworthiness is critical. The psychological, social, and environmental aspects all have an impact on criminal trial witness credibility and accuracy. Witness reliability is affected by fallible memory and perception. Several Indian court rulings have acknowledged that human memory is flawed and influenced by a variety of events. False recollections can also have an impact on witness reliability. According to research, leading questions can either influence or generate memories. Most Indian police investigations involve multiple rounds of questioning.

The Witness Protection Scheme is advanced, yet difficult to apply. Current issues include finance, agency collaboration, and law enforcement's ongoing protection. To function properly, courts and investigating agencies must identify and protect vulnerable witnesses. Witness safety and punishment, particularly for prominent individuals, are major concerns in India. Witnesses face both subtle and overt threats intended to persuade or prevent them from testifying. Strong protection measures are required because coercion or enticement has turned witnesses hostile in some high-profile instances. Many laws protect witnesses outside of the Witness Protection Scheme. The Indian Penal Code 195A makes threatening or spreading false evidence a criminal offense.

Trial witnesses' rights are critical to Indian justice. The Supreme Court has emphasized witness comfort and respect throughout the cases. Compassion, respect, freedom from cross-examination harassment, reasonable

travel fees, and the right to present evidence in their preferred language are required. Under certain circumstances, sexual assault victims, juveniles, and other vulnerable witnesses may testify by video conference or with assistance. Some courts realize the importance of protecting witnesses and conducting fair trials.

### THE EVOLVING LEGAL FRAMEWORK OF PRISONERS' RIGHTS

One of the earliest laws governing prison administration in India, the Prisons Act of 1894, offers fundamental principles for treating inmates, but it is mainly punitive and out of date. Its contents are centered on punishment, order, and enforcement rather than rehabilitation or comprehensive rights guarantees. This colonial-era statute does not address crucial issues like as mental health or human rights in custody, rendering it ineffective for modern correctional techniques. As a result, the Act's limits remain crucial to ongoing calls for prison reform and humane treatment standards. The Nelson Mandela Rules, also known as the United Nations Standard Minimum Rules for the Treatment of Prisoners, which set forth humane treatment requirements, have an impact on India as a signatory to international conventions. These guidelines promote nondiscriminatory treatment, healthcare access, cleanliness, proper nutrition, and rehabilitation chances for prisoners. Although not legally obligatory, India's commitment to these criteria emphasizes its need to match its prison system with global human rights standards. However, there is still a huge difference between these criteria and the real circumstances in Indian prisons. The judiciary has been essential in ensuring inmates' rights through major cases: **1.** Sunil Batra v. Delhi Administration (1980): This decision limited the use of solitary confinement and affirmed inmates' rights to humane treatment, representing a shift in the recognition of prisoners' rights under Article 21. **2.** Hussainara Khatoon v. State of Bihar (1979): The Supreme Court stressed the right to a prompt trial for under-trial inmates, pointing out that lengthy incarceration breaches Article 21. **3.** D.K. Basu v. State of West Bengal (1997): This case established principles against custodial torture, enforcing responsibility and protecting detainees from abuse, which are critical to safeguarding the right to life under Article 21. <sup>4</sup>

According to the National Crime Records Bureau, Indian jails are severely overcrowded, with several operating at or above 100% capacity. Overcrowding impedes appropriate sanitation, healthcare, and safety, whereas understaffing exacerbates the situation by putting undue demand on prison personnel, hurting everyday administration and security. Custodial violence, which includes physical abuse and custodial killings, is a severe problem that is frequently blamed on overcrowding, a lack of control, and inadequate staff training. Despite Supreme Court rules and constitutional rights under Article 21, incidents of custodial assault continue, highlighting the need for tighter safeguards and independent control. Mental health difficulties, like as sadness and anxiety, are common among convicts, exacerbated by overcrowding and insufficient mental health supports. Due to a shortage of mental health experts and limited access to counseling, many convicts go untreated, underlining the crucial need for enhanced mental health care. Female detainees confront special obstacles, such as safety issues, inadequate healthcare, and a lack of childcare options. Women's prisons are overcrowded, and key gender-sensitive services are insufficient, compromising the well-being of women and children in prison.

<sup>4</sup> Kumar, A. (2024). Prisoners' Rights and Conditions in Indian Jails. *Universal Human Rights*, [online] 1(NA), p.11. Available at: [https://www.researchgate.net/publication/385704100\\_Prisoners](https://www.researchgate.net/publication/385704100_Prisoners).