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## **IS JUDICIARY CORRECT ON ITS PART IN RECOGNIZING THE TESTIMONY OF EYE-WITNESSES AS OF AN EVIDENTIARY VALUE?**

*Indian criminal/trial justice system is the one by following which judiciary aims to dispense justice in the best possible way. Some aspects of this system are debatable and one of them is major reliance on eye-witnesses' testimony to determine the judgment of a criminal case or relying it majorly in a trail to extract key facts of the case. The rationale that goes behind judiciary relying on eyewitness testimony to meet ends of justice can be gauges by following statement of Bentham about this that "Witnesses are the eyes and ears of justice.". So by this it can be understood that the judges or judicial officers were not present at the scene of the crime, so the testimony of who were present there is given paramount importance as they vicariously understand the scene of crime through them, as only by lucidly understating the scene of crime, the pronouncement of judgement can accordingly accurately followed.*

So to perfectly effectuate the phrase that "Justice should not only be done, it should also be seemed to be done", the judiciary through legal frameworks has emphasized its justice system majorly on testimony of eye-witnesses. But the flip side of this issue is that eyewitnesses are at times not reliable as it is too much to ask to them about the exact scene of crime as at that time there can be reasons because of which they may not report correctly like anxiety issue because of the scene of the crime, not paying heed to the intricacies of the scene of crime which are asked about during the trial, not able to see the face of the perpetrator at the scene of crime, which is generally important to be recognized and mostly is done by the eyewitness, etc.

Therefore, looking at both the sides, it can be concluded that the paramount importance that our Indian judiciary gives to the testimony of eyewitness to meet ends of justice is a

questionable rule of law, which has become contentious by observing the cases of wrongful convictions that has happened due to the testimony given by eye-witnesses which was later turned out to be erroneous. Ergo, it has become important for our judiciary to relook the importance that it has given to eyewitness testimony in pursuance of carrying out justice.

### **What is an Eye-Witness?**

An eye-witness is a person who is actively present at the scene of the crime or present at where the cause of action has begun and henceforth, by looking at the happenings becomes a witness of that incident or event. In other words, it can be said a person who is able to supply information that he gains by actively being present in a situation, in oral or written form to any court is said to be an eye witness.<sup>1</sup> Therefore, a person who has the capability to sworn in a court to give details or intricacies about the event in which he was present is said to be an eye-witness. The information or the account which the eye-witness gives about the details that is the reason of investigation is said to be the testimony of eye-witness.

### **In what ways legal validity is given to eyewitness testimony?**

There are certain laws especially the Indian evidence act is one such act which gives paramount importance or gives legal validity to testimony of eye witness, which place eye-witness testimony to a position where it becomes of paramount importance to a trial. So, the laws which recognise or give validity to eyewitness testimony are-

Section 3(1) of Indian Evidence Act states that any statement or testimony given by an eye-witness is deemed to be an evidence.<sup>2</sup> This means that the testimony of an eye-witness is of legal importance for a court as it is considered very important evidence in relation to matters of fact under inquiry.

This testimony of eyewitness is allowed to be given in a court of law and this witness shall not fulfil any criteria i.e. every person shall be competent to testify to a court of law about the matter of facts which he has been witnessed to during investigation. This point of law has been enshrined in section 118 of Indian evidence act,<sup>3</sup> in it, it has been specifically stated that

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<sup>1</sup> Madhu @ Madhuranatha v. State of Karnataka 2014 A.I.R. S.C. 394 (India).

<sup>2</sup> S.3 (1), Indian Evidence Act 1872, 01, Acts of Parliament, 1872 (India).

<sup>3</sup> S.118 Indian Evidence Act 1872, 01, Acts of Parliament, 1872 (India).

that testimony is accepted of an eyewitness unless it is debarred because of legal disability such as a lunatic/insane person cannot testify as an eyewitness as his testimony cannot be relied because of its very nature of his mental capacity.

Section 134 of the Indian evidence act<sup>4</sup> bolsters the previous provisions of the act which gives validity or paramount importance to testimony of eyewitness, this section states that to prove a matter of fact, it is not necessary that a certain or given number of eyewitnesses shall testify that fact, a sole witness can also be enough and would carry the same importance as of any other or any other number. In other words, it can be said that the testimony of a single eye-witness is enough for a court of law to convict a person.<sup>5</sup>

Section 135 of Indian evidence act bolsters the evidentiary value of testimony of eyewitnesses as it states the order of production of eyewitnesses and procedure in which their testimony shall be examined is also there, which gives a great deal of paramount importance to testimony of eyewitnesses.<sup>6</sup>

Therefore, these are some of the major laws by which testimony of eyewitnesses are given legal validity.

### **Problems associated with it for using it as an important evidentiary value**

The Indian evidence act recognises the testimony of eyewitnesses as evidentiary value, which makes it of paramount importance for the course of trial, but by doing that, many travesty of justice has been recorded because of many reasons, which has made this is a bone of contention. The major problem of regarding it as an evidentiary is the travesty of justice that happens when the eyewitness does not state the true facts because it results to a gateway for wrongful convictions. There are certain reasons because of which eyewitness testimony is not considered of late as equivalent to materialistic evidence which creates the above problems, these reasons are-

One of the major reasons is the issue of identification i.e. the eyewitness is ought to identify in front of the police and the court of law the perpetrator. This issue was first surged up in the

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<sup>4</sup> S.134 Indian Evidence Act 1872, 01, Acts of Parliament, 1872 (India).

<sup>5</sup> Takdir Samsuddin Sheikh v. State of Gujarat, (2011) 10 S.C.C. 158 (India).

<sup>6</sup> S.135, Indian Evidence Act 1872, 01, Acts of Parliament, 1872 (India).

case “Arthurs v. Attorney-G”,<sup>7</sup> but here the issue was not convincingly put to rest i.e. it was not discussed at a length, it was only touched upon, but in the case “The People (Attorney-general) v Casey (No.2)”, this issue was discussed at length and in it also courts were given directions so as to prevent wrongful convictions on the basis of eyewitnesses testimony, it was held that

“If their verdict as to the guilt of the prisoner is to depend wholly or substantially on the correctness of such identification, they should bear in mind that there have been a number of instances where responsible witnesses, whose honesty was not in question and whose opportunities for observation had been adequate, made positive identifications on a parade or other- wise which identifications were subsequently proved to be erroneous; and accordingly that they should be specially cautious before accepting such evidence as correct; but that if after careful examination of such evidence in the light of all the circumstances, and with due regard to all the other evidence in the case, they feel satisfied beyond a reasonable doubt of the correctness of the identification they are at liberty to act upon it”.<sup>8</sup>

In other words, it can be said that there is over reliance of judiciary on the memory of the eyewitness, but psychologically it cannot be expected out of an eyewitness to remember the intricacies and certainly, the investigation and the trial cannot be done on the basis of that testimony also because human brain cannot retain intricacies for a long time and generally a criminal trial goes for a long period of time. Suggestive identification also cannot be relied upon, as sometimes police for smooth run of business suggest some photos of accused to the eyewitness to try and make him identify, and in some cases eyewitness fills some lacunae of the lost memory and identifies the wrong person.

The eyewitness may also not be relied upon because they have a general tendency to focus more on the weapon of the crime that the perpetrator has used rather than the perpetrator.<sup>9</sup> So generally, true facts of the case are not brought to the court of law which in turn becomes a problem in relying on an eyewitness as evidence.

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<sup>7</sup> Arthurs v. Attorney-G, [1999] UKEAT 578\_98\_0103 (Ireland).

<sup>8</sup> The People (Attorney-general) v. Casey 505 U.S. 833 (1992).

<sup>9</sup> Subodh Asthana, Eyewitness Testimonies: A Gateway to Wrongful Convictions, ipleaders (June.15 2019, 3:01AM)/Eyewitness%20Testimonies\_%20A%20Gateway%20to%20Wrongful%20Convictions-%20iPleaders.html.

The court environment is also one such factor because of which testimony of eyewitness cannot be relied upon as an evidence, as the environment is such because of which the true facts of which he was a witness do not come up to the court. This environment involves the rigorous paperwork, cross-examination, examination-in chief, etc, which causes mental trauma and stress to the eyewitness.

Other factors such as witnessing an event for a short span of time still the testimony being duly noted, existing relationship of accused and eyewitness, lack of interest of witness in the crime scene, motive of the eyewitness, etc, also suggest that testimony of eyewitness becomes problematic when it is taken into serious evidentiary value.

In the case “Bhogin Bhat Kirji v. State of Gujarat”, these issues were discussed at length i.e. reasons were recorded as to why regarding testimony of eyewitnesses as evidentiary value is questionable.<sup>10</sup> Ergo, it can be said that testimony cannot be relied upon mainly because a witness is not like a tape record when he is giving evidence more than a year later about what happened a year earlier his memory may not serve him completely right.<sup>11</sup> Therefore, because of these reasons due to testimony of eyewitnesses, more than 75% accused are wrongfully convicted.<sup>12</sup> In consideration of all things, in the case *United States v. Wade*, it was held that the evidence of testimony of eyewitness is “notoriously unreliable”.<sup>13</sup>

### **Are there any existing legislations to combat these problems?**

These problems are generally considered as a result of the collateral damage that is caused because of the laws under Indian evidence act which signifies the importance of testimony of eyewitnesses as a evidentiary value. So that is the reason, till now actively there has not been any amendment to do away with these laws. Still, to combat the travesty of justice happening because of using it as important evidence in a court of law, judiciary now has started to give forensic and material science a significant evidentiary value.<sup>14</sup>This was effectuated on legal

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<sup>10</sup> Bhogin Bhat Kirji v. State of Gujarat, 1983 Cri L.J. 1096 (India).

<sup>11</sup> Aparna Srinivasan & K.Roja, A DETAILED STUDY ON EYEWITNESS TESTIMONY IN INDIA, 120 International Journal of Pure and Applied Mathematics 983, 990 (2018).

<sup>12</sup> Ashitha Nagesh, Every year 100 innocent people are wrongly convicted of sex crimes, Metro News (Nov 23 2016 11:51 AM) <https://metro.co.uk/2016/11/23/every-year-100-innocent-people-are-wrongly-convicted-of-sex-crimes-6277325/>.

<sup>13</sup> United States v. Wade 388 U.S. 218 (1967).

<sup>14</sup> Asthana, supra note 9.

grounds by the implementation of criminal amendment act, 2005,<sup>15</sup> by which sections like 291a was inserted which gave authority to investigating officers to collect DNA sample from accused and victim, this signifies that medical and forensic evidence is given due consideration to act as a evidence, but these sections only revolved around medical aspect, which means that still eyewitnesses testimony has not lost its importance as evidence as except for medical aspect forensic and medical science has still not achieved great heights as a evidentiary value apart from medical aspect.

Therefore, per se there are no active legislations to combat these problems, but by considering the above-problems, the judiciary is continually trying to lay emphasize on forensic and medical science as far as evidentiary value is concerned, but the whole procedural and substantive aspect of trial which revolves around eyewitness testimony as evidentiary value cannot be changed if not for an amendment act which only revolves around this subject.

## **Conclusion**

The testimony of eyewitnesses are considered as a very important source of evidence in Indian judicial system, as witnesses, through day and ages has emerged as a medium to achieve ends of justice or to deliver justice. This was bolstered by the judgment of” *Vikas Kumar Roorkewal v. State of Uttarkhand*”, in which it was held that eyewitnesses play a very important role in penal justice system and every legislative action for the same is a step in pursuance of fundamental principle of trial.<sup>16</sup> It is given evidentiary value attributable to sections of Indian evidence act like section 134, 135, etc. These sections have legally enforced the validity of eye witnesses’ testimony i.e. given legal validity to this testimony which was already a proven fact, as it was followed in many other countries like USA, Ireland, etc. Sometimes because this holds an evidentiary value and is given importance, which can be understood by the judgment of the case *Pratap Chauhan v. Ram Naik*, in which it was held that testimony of eyewitness cannot be looked down upon just because it has minor discrepancies.<sup>17</sup>

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<sup>15</sup> The Criminal Law (Amendment) Act, 2005, 02 acts of parliament, 2006 (India).

<sup>16</sup> *Vikas Kumar Roorkewal v. State of Uttarkhand*, (2011) 2 S.C.C. 178.

<sup>17</sup> *Pratap Chauhan v. Ram Naik*, Criminal Appeal No. 512 of 1992 (India).

This can be further understood by the judgment of the case “Edward v. Inspector of Police”, in which it was held that a sole witness’ testimony is enough to book a person for his offence.<sup>18</sup> This becomes a double-edged sword. This means that sometimes by following the testimony of eye witness, at the hands of judiciary wrongful convictions take place which in turn effectuate travesty of justice. These wrongful convictions take place because the testimony of eyewitness is erroneous in that particular cases and it happens even when the eyewitness gives his testimony to the best of his knowledge because of many reasons, among them some of the major ones are, difficulty in retaining what he was witnessed to with the passing of trial, eerie or alien court environment in which he is ought to testify ( this environment consists of rigorous paperwork, cross examination and examination-in-chief of his testimony, etc), getting confused by officials suggesting identification, as eyewitnesses try to fill the details themselves because of memory fade i.e. identification issues, etc. To combat these problems, the emergence of forensic and material science as evidence was encouraged by judiciary by passing criminal amendment act, 2005, in it incorporating certain section regarding this, but could not be effectuate in a way full-fledged manner, as it is a herculean task to change the way the trial system works. Therefore, it seems that testimony of eyewitnesses, no matter how many hurdles or discrepancies it creates, judiciary is continuing to follow it on the reasoning that a person who speaks under an oath speaks gospel truth and thus shall be relied upon.

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<sup>18</sup> Edward v. Inspector of Police, Criminal Appeal No. 35 of 1998 (India).

