

# **THE ROLE OF EYE WITNESS TESTIMONY IN CRIMINAL TRIALS**

*Dissertation submitted to Maharishi University of Information Technology, Noida, School of Law, in partial fulfilment of the requirement for the degree of Master of Laws.*



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## **DECLARATION**

This dissertation on “**THE ROLE OF EYE WITNESS TESTIMONY IN CRIMINAL TRIALS**” embodies and is imperative with the result of my own research work pursued under the supervision of **DR. VIKAS SHARMA**. I declare that no part of this dissertation has been published or submitted to any other institution for any other purposes. My indebtedness to other works and publications have been duly acknowledged at relevant places.

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## **CERTIFICATE**

This is to certify that this Dissertation titled “**“THE ROLE OF EYE WITNESS TESTIMONY IN CRIMINAL TRIALS”**” is written by **Bhavesh Verma** bearing enrolment no. MUIT0224054008. He is a candidate of Masters of Law Program here at the Maharishi University of Technology, Noida, School of Law. She has conducted all the research work under my supervision and submitted original and bona fide work to our utmost satisfaction, in the final semester for the partial fulfilment of the requirements for the award of the degree of Master of Laws.

**SUPERVISOR:**

**Dr. Vikas Sharma**

## **ACKNOWLEDGMENT**

This study is the culmination of countless hours of research by the author. Any material utilized by the author that has been used in this study has been thoroughly acknowledged. My research on this topic will help me to create clear thoughts and a big debate surrounding the penal structure can be rectified.

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## **CHAPTER 1: INTRODUCTION**

Eyewitness testimony is a crucial component of India's criminal justice system, acting as a main form of evidence in criminal proceedings. Eyewitness testimony frequently serves as the decisive element in establishing the culpability or innocence of the defendant. In India, like in numerous other legal systems, eyewitness testimony is regarded as extremely valuable because of its capacity to offer direct and firsthand reports of criminal incidents. Nevertheless, the dependability and precision of eyewitness evidence have consistently been a topic of contention and examination among legal professionals.

Eyewitness evidence carries substantial importance in criminal cases as it provides a firsthand account of events from persons who assert to have directly witnessed the perpetration of a crime. The direct observation of the situation can offer important information and understanding about the events related to the claimed offense, aiding in the creation of a chronological sequence of events and the identification of the person responsible. When there is a dearth of physical evidence or when the existing evidence is not definitive, eyewitness testimony can be used as the main or only basis for determining whether someone is guilty or innocent.

Although widely regarded as significant, eyewitness evidence is not exempt from its inherent weaknesses and limits. Human memory is intrinsically prone to error and vulnerable to numerous circumstances that might distort or corrupt the process of recalling information. Various factors, including stress, trauma, suggestibility, and the passage of time, can all influence the precision of eyewitness testimonies. Studies in the fields of psychology and cognitive science have established that memory is reconstructive, indicating that individuals may unintentionally supplement missing material in their memory with inaccurate or deceptive details. Furthermore, extrinsic factors such as suggestive questioning, societal influence, and subsequent knowledge can exacerbate the contamination of eyewitness evidence, resulting in mistakes or deliberate falsehoods.

The dependability of eyewitness evidence is additionally complicated by matters of perception and identification. Research has indicated that people may struggle to remember and recognize faces with precision, especially if such faces belong to someone of a different racial or cultural background. Cross-racial or cross-ethnic identification bias refers to a phenomena where individuals tend to make incorrect identifications and result in erroneous convictions. Moreover, the procedure of lineup identification, wherein eyewitnesses are requested to identify the culprit from a group of individuals, might be vulnerable to manipulative methods utilized by law enforcement, resulting in inaccurate identifications.

Within the framework of India's criminal justice system, eyewitness testimony carries significant weight owing to its historical and cultural relevance. In the Indian legal system, there is a significant focus on oral evidence, with eyewitness testimony being regarded as more convincing than circumstantial or forensic evidence. Nevertheless, the dependence on eyewitness testimony has prompted worries over the possibility of wrongful convictions, especially in situations when the credibility of the witness is doubted or when there is a scarcity of supporting evidence.

In Indian courts, the admissibility and assessment of eyewitness testimony are regulated by the Indian Evidence Act of 1872. This legislation establishes the guidelines and protocols for the introduction and questioning of witnesses. Nevertheless, the Act fails to explicitly tackle the difficulties linked to eyewitness testimony, hence allowing for varying interpretations and discussions among legal professionals and academics. Hence, it is imperative to acquire a thorough comprehension of the significance of eyewitness testimony inside the Indian legal framework, encompassing its advantages, constraints, and prospective improvements.

This research aims to investigate the significance of eyewitness testimony in criminal trials in India, considering the intricate nature of this type of evidence. This study seeks to gain a comprehensive understanding of the difficulties and consequences related to eyewitness testimony in the Indian setting by analyzing pertinent case law, legal precedents, and empirical research. This dissertation will assess the current legal rules and procedures that regulate the utilization of eyewitness testimony. It will also pinpoint areas that could benefit from reform and put forth suggestions to improve the dependability and equity of the criminal justice system in India. This dissertation seeks

to contribute to the continuing discussion on eyewitness evidence and its influence on criminal trials in India by employing an interdisciplinary approach that integrates perspectives from law, psychology, and criminology.

## **1.1 Literature Review**

- i. **“Testimony of Eyewitness And its Reliability in India: A Critical Analysis”**<sup>1</sup> authored by **Navdeep Kadian**- The literature analyzes the significance and trustworthiness of eyewitness evidence in the legal context of India. The statement emphasizes the importance of eyewitnesses in legal proceedings, especially in criminal cases, when their testimony can greatly impact the accused. Nevertheless, the assessment recognizes the inherent difficulties linked to eyewitness evidence, including inaccuracies, discrepancies, and the risk of unjust convictions. Although there are difficulties, there is no legal restriction on condemning individuals purely only on the testimony of a single eyewitness.
- ii. **“A Detailed Study on Eyewitness Testimony in India”**<sup>2</sup> authored by **Aparna Srinivasan**- This literature highlights the importance of eyewitness testimony in legal proceedings, specifically in criminal cases, where it can have significant consequences for the accused. Eyewitness testimony refers to the testimony given by an individual who personally witnessed the conduct or incident under consideration. Nevertheless, the author emphasizes the significance of the witness possessing the necessary legal capacity and qualifications to provide testimony in a court of law. This suggests that conditions such as intoxication or insanity may hinder a witness from being considered competent to testify. The author emphasizes the likelihood of incorrect identifications made by eyewitnesses, particularly in circumstances where the identification of the accused is crucial. Although there is a chance of incorrect identification, the author points out that courts may use the testimony of a sole eyewitness to support a conviction, especially if the witness is considered capable and truthful. Nevertheless, as a precautionary measure, courts frequently look for further evidence to substantiate eyewitness testimony.

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<sup>1</sup> Navdeep Kadian, Testimony of Eyewitness And its Reliability in India: A Critical Analysis 8 IJNRD c244 (2023).

<sup>2</sup> Aparna Srinivasan, A Detailed Study on Eyewitness Testimony in India 120 IJPAM 983-995 (2018).

- iii. **“Eyewitness Testimony: A Psychological and Legal Perspective”**<sup>3</sup> authored by **Anjali Nandan**- This literature examines the inherent challenges associated with eyewitness testimony in the legal system. Although eyewitness testimony might be compelling and persuasive to jurors, it is not always dependable. Identification errors may occur, resulting in erroneous allegations and convictions. The author emphasizes multiple elements that can contaminate eyewitness recollection, including suggestive inquiries, discussions with fellow witnesses, and individual preconceptions. Furthermore, the author highlights the fact that individuals are capable of recollecting events that never occurred, thus demonstrating the vulnerability of memory to distortion. The study encompasses a sample size of 100 participants, ranging in age from 20 to 30, and representing diverse professional and educational backgrounds. The study utilizes a method called disproportionate stratified random sampling to gather data. The findings indicate that a notable proportion of participants' answers did not align with their initial responses. This discrepancy can be attributed to factors such as reconstructive memory, anxiety, stress, or the influence of suggestive questions. The author disputes the idea that eyewitness evidence is fundamentally dependable and precise, contending that research reveals its susceptibility to distortion. The author argues that memory is not comparable to a video camera's objective recording of events, but rather a subjective and adaptable construct influenced by personal biases and experiences. In general, the literature highlights the necessity of being careful when depending on eyewitness testimony in court procedures and underlines the significance of supporting evidence and comprehending the constraints of human memory.
- iv. **“Eyewitness Testimony in India”**<sup>4</sup> authored by **Radha Singh**- In this literature the author analyzed the prominent role of eyewitness testimony in the Indian legal system. Eyewitnesses are individuals who provide testimony based on their personal observation of events, and their testimony plays a vital role in trials to guarantee equitable and impartial judgments. Nevertheless, the author

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<sup>3</sup> Anjali Nandan, *Eyewitness Testimony: A Psychological and Legal Perspective* 6 JPSP 5446-5453 (2022).

<sup>4</sup> Radha Singh, *Eyewitness Testimony in India* 4 IJLMH 2581-5369 (2021).



acknowledges the fallibility of eyewitness testimony, as it has the potential to result in erroneous convictions. The literature cites a study that demonstrates how faulty or erroneous eyewitness testimony has played a role in a substantial amount of wrongful convictions. Although there is a possibility of mistakes, there are no limitations on convicting an individual purely only on the testimony of a single eyewitness. The author underscores the notion that evidence should be assessed based on its weight rather than solely on its quantity, emphasizing the significance of thoroughly analyzing eyewitness testimony. In general, the author implies that although eyewitness evidence can be important, it is not always completely reliable. It is imperative to use prudence and meticulousness while depending on such testimony in judicial processes to guarantee the accurate and equitable administration of justice.

- v. **“Eye Witness Identification: Live, Photo and Video Lineups”**<sup>5</sup> authored by **Fitzgerald, et.al.** - This literature examines the many mediums employed for conducting eyewitness identification lineups in criminal investigations. Their purpose is to emphasize the differences in procedures among different legal jurisdictions, as some jurisdictions employ live lineups while others choose photo or video lineups. The authors refute the idea that live lineups possess an inherent advantage in terms of precise eyewitness identification. They propose that the advantages of live presentations must surpass the logistical difficulties of preparing and managing such lineups. Based on an analysis of previous research, the authors conclude that even in controlled experimental conditions where practical difficulties are reduced, there is no conclusive proof that live lineups are better. Thus, they deduce that live lineups are seldom the optimal choice in practical situations. Instead, they support conducting additional research to identify which non-live medium achieves the optimal balance between offering probative value and being realistically practicable. In general, the authors question the belief that live lineups are better and suggest that lineup procedures in criminal investigations should be reassessed.

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<sup>5</sup> Fitzgerald et.al., Eyewitness identification: Live, Photo, and Video Lineups. *Psychology, Public Policy, and Law*, 24(3), 307–325 (2018).

## **1.2 Statement of Problem**

The credibility and precision of eyewitness testimony have been a topic of long concern and deliberation within the criminal justice system, both in India and worldwide. Although eyewitness testimony is commonly regarded as a crucial kind of evidence in criminal cases, it is intrinsically vulnerable to numerous variables that can undermine its credibility and accuracy. Memory distortion, perceptual biases, suggestive questioning, and post-event information are all influential factors that can cause mistakes and inconsistencies in eyewitness testimonies. These factors have the potential to result in false convictions or miscarriages of justice. Within the framework of India's legal system, which prioritizes oral evidence and witness testimony, the significance of eyewitness testimony in criminal trials is particularly pronounced. Nevertheless, the dependence on eyewitness testimony without supporting evidence raises concerns over the dependability and acceptability of such testimony, particularly in situations where the credibility of the witness is doubted or when there is a lack of independent confirmation.

In addition, the current legal norms and principles regulating the utilization of eyewitness testimony in Indian courts, as specified in the Indian Evidence Act of 1872, might not sufficiently tackle the intricacies and difficulties linked to eyewitness testimony. The Act does not explicitly cover matters such as memory contamination, identification biases, or line up processes, which allows for different interpretations and possible contradictions in the assessment of eyewitness testimony.

The problem statement of this dissertation focuses on the necessity to thoroughly analyze the significance of eyewitness evidence in criminal trials in India, encompassing its advantages, constraints, and possible influence on the administration of justice. More precisely, the dissertation seeks to tackle the following questions:

- i. What are the determinants that impact the dependability and precision of eyewitness evidence in the Indian context?
- ii. What methods do Indian courts use to assess and consider eyewitness testimony in criminal trials, and what legal criteria and principles regulate its acceptance as evidence?

- iii. What are the consequences of depending on eyewitness testimony as the main form of evidence when there is no supporting evidence?
- iv. What innovations or strategies can be employed to improve the dependability and impartiality of eyewitness testimony in criminal prosecutions in India?
- v. How can the integration of knowledge from other disciplines such as law, psychology, and criminology enhance our understanding of the intricate factors involved in eyewitness testimony in India?

This dissertation aims to enhance comprehension of the difficulties and consequences related to eyewitness testimony in the Indian judicial system. It also aims to suggest ways to enhance the dependability and impartiality of such testimony in criminal proceedings.

### **1.3 Hypothesis**

The existing legal laws regulating the utilization of eyewitness testimony in criminal cases in India fail to sufficiently address the intricacies and difficulties connected with such testimony, resulting in potential mistakes and inconsistencies in the assessment of evidence. Eyewitness testimony in Indian criminal prosecutions is susceptible to memory distortion, perceptual biases, and suggestive questioning, which can undermine its reliability and accuracy. This vulnerability increases the risk of false convictions or miscarriages of justice. The utilization of eyewitness testimony as the main form of evidence in criminal cases in India has the potential to result in prejudiced verdicts, inequitable outcomes, and wrongful convictions due to the inherent constraints and susceptibilities associated with eyewitness testimony. Indian courts that strictly adhere to legal standards and guidelines regarding the use of eyewitness testimony may differ in their evaluation and handling of such testimony compared to courts that take a more flexible approach. This can result in variations in the reliability and fairness of trial outcomes. The hypotheses will form the basis for examining the research questions and objectives stated in the dissertation, enabling a methodical exploration of the function of eyewitness testimony in Indian criminal prosecutions.

### **1.4 Research Objectives**

- i. To conduct a thorough examination of the current laws and procedures that regulate the utilization of eyewitness testimony in criminal cases in India.
- ii. To analyze the significance, reliability, and potential influence of eyewitness evidence on trial outcomes within the criminal justice system of India.
- iii. To analyze the difficulties and intricacies involved in assessing eyewitness testimony in criminal cases in India, encompassing elements such as memory misrepresentation, perceptual biases, and leading questioning.
- iv. To evaluate the degree to which Indian courts comply with legal rules and procedures for assessing and handling eyewitness testimony, and to examine possible variances in behavior among different jurisdictions.
- v. To examine the efficacy of strategies implemented to improve the dependability and precision of eyewitness evidence in criminal cases in India. This includes evaluating lineup protocols, police investigation techniques, and public awareness campaigns.
- vi. To assess the influence of eyewitness testimony on the equity and credibility of the criminal justice system in India, specifically examining its possible contribution to false convictions and miscarriages of justice.
- vii. To suggest measures to enhance the assessment and management of eyewitness testimony in criminal trials in India, with a specific emphasis on promoting fairness, precision, and dependability, while also protecting the rights of both witnesses and defendants.

The research objectives will direct the methodical examination and analysis of the significance of eyewitness evidence in Indian criminal cases, offering significant insights into the difficulties, practices, and possible improvements in this vital component of the criminal justice system.

## **1.4 Research Methodology**

In this study the author will adopt Doctrinal and analytical approach of research. In this approach, the primary sources (books, articles and journals) shall be relied. The secondary sources shall be internet materials and case study. Therefore, the modus-operandi shall be doctrinal as main sources to be relied is to be primary.

## **Research Tools**

My research tool shall include-

**Doctrinal Documents-** These documents shall include express legislations (Acts, Rules and Regulations) of competent legislature in India and other countries mentioned in this study respectively. Rationale approach has been adopted according to the theme.

Using a analytical research methodology that involves the following steps:

- i. **Literature review:** The first step is to conduct a comprehensive literature review to identify and analyze existing literature on the topic. This will involve examining relevant legislation, policy documents, academic journals, and other sources of information to identify key issues, debates, and controversies relating to the topic.
- ii. **Case studies:** The second step is to conduct case studies to examine the implementation and enforcement of laws governing reliability of eye witness testimony. This can involve analyzing specific cases where court has given its interpretation on the present topic.

By the abovementioned approach, I shall rationally come on the required information required in this study.

## **1.6 Chapterization**

### **Chapter 1 Introduction**

### **Chapter 2 Psychological Factors Influencing Eyewitness Testimony**

This chapter shall include the complex connection between psychological elements and eyewitness testimony in criminal cases. It offers a thorough examination of the cognitive processes and social influences that affect the trustworthiness of this type of evidence.

### **Chapter 3 Legal Framework Surrounding Eyewitness Testimony**

This chapter shall include legal framework concerning eyewitness evidence in India, investigating its historical origins and analyzing its present use in criminal prosecutions.

It includes Indian Evidence Act of 1872 and examines the standards for determining the reliability of witnesses, with a particular focus on the significance of confirming evidence. The admissibility of eyewitness evidence is influenced by landmark cases and legal precedents, underscoring the importance of exercising caution and providing additional supporting evidence.

#### **Chapter 4: Challenges and Controversies in Using Eyewitness Testimony**

Chapter 4 delves into the complexities and controversies surrounding the use of eyewitness testimony in the Indian legal system. Despite its perceived reliability, eyewitness testimony is fraught with limitations such as memory distortion, suggestibility, and cross-cultural identification challenges. The chapter examines the lack of credibility of eyewitness testimony, significant limitations, and the comparative evidentiary worth of eyewitness testimonies versus forensic reports. It also explores the challenges posed by eyewitness testimony in criminal trials, controversies surrounding its reliability, wrongful convictions attributed to erroneous identifications, and efforts to mitigate its impact through procedural safeguards and reforms. The conclusion emphasizes the urgent need for standardized identification procedures, educational initiatives, innocence projects, and wrongful conviction review mechanisms to enhance the reliability and credibility of eyewitness evidence and uphold fairness and justice in the Indian legal system.

#### **Chapter 5: Strategies for Enhancing the Reliability of Eyewitness Testimony**

Chapter 5 delves into strategies for enhancing the reliability of eyewitness testimony within the criminal justice system. It emphasizes the importance of understanding the variables influencing eyewitness recall, implementing standardized lineup procedures, improving interview techniques, and providing education and training to legal professionals and law enforcement personnel. The chapter highlights the need for ongoing research into innovative practices and emerging technologies, as well as the ethical and legal implications surrounding eyewitness identification. By fostering collaboration and embracing evidence-based approaches, the chapter concludes with a call for a more equitable and trustworthy legal system that upholds the principles of justice for all through continual evaluation and innovation.

## **Chapter 6: Science and role of Eyewitness**

Chapter 6 provides an in-depth exploration of the science and role of eyewitness testimony within the criminal justice system. It underscores the importance of scientific research in understanding the complexities and potential inaccuracies associated with human memory, particularly in the context of criminal investigations. The chapter highlights various ways in which scientific research has influenced legal practices, such as the development of best practices for identification procedures, the admissibility of expert testimony, updated jury instructions, and the implementation of pretrial reliability hearings. Additionally, it discusses how policing agencies have responded to scientific research by incorporating evidence-based approaches into their identification practices, including the adoption of sequential lineup methods, training programs for law enforcement officers, and collaboration with researchers. Overall, the chapter emphasizes the importance of integrating empirical findings into legal and law enforcement practices to enhance the reliability and accuracy of eyewitness testimony, ultimately striving for a more just and equitable criminal justice system.

## **Chapter 7: The role of society and witness protection in India**

Chapter 7 explores the integral role of the police, society, and non-governmental organizations (NGOs) in witness protection within India's criminal justice system. It delineates police responsibilities outlined in statutes like the Police Act of 1861 and highlights the societal influence on law enforcement and crime prevention. Emphasizing the importance of collective cooperation and societal norms, the chapter proposes amendments to legislation and calls for enhanced training for police personnel and public awareness campaigns to bolster witness protection efforts. Additionally, it underscores the vital contributions of NGOs in gathering information, providing support to witnesses, and advocating for robust witness protection policies, ultimately advocating for a comprehensive approach to safeguarding witnesses in India.

## **Chapter 8: Conclusion and Suggestion**

Chapter 8 concludes by emphasizing the significant contributions of the dissertation to understanding and handling eyewitness testimony within the Indian legal system. It underscores the importance of evidence-based approaches in legal practice and policy-making, highlighting the need for reforms to enhance reliability and accuracy. The

chapter suggests future research directions, including the exploration of technology's impact, cross-cultural differences, cognitive interview techniques, emotional factors, eyewitness confidence, and social influences. Ultimately, addressing the challenges associated with eyewitness testimony is essential for upholding justice, preventing wrongful convictions, improving investigative practices, and fostering public trust in the legal system.

## **1.7 Scope**

This study aims to thoroughly investigate the role of eyewitness testimony in criminal prosecutions. The analysis will explore different facets, such as the legal framework encompassing eyewitness testimony, the elements that influence its trustworthiness, and its impact on legal proceedings. The project aims to evaluate the efficacy and feasibility of various forms of eyewitness testimony, including live lineups, photo lineups, and video lineups, in the context of criminal cases. A substantial section of the study will primarily concentrate on comprehending the components that impact eyewitness testimony, encompassing memory distortion, suggestive interrogations, and external impacts. The study will examine the difficulties and restrictions related to eyewitness testimony, including the possibility of incorrect identifications and the requirement for further evidence to back up eyewitness statements. In addition, the study will perform a comparative examination of different mediums utilized for eyewitness identification in order to ascertain their individual strengths and limitations. This approach seeks to offer insights into the medium that offers the optimal equilibrium between probative value and practical utility in criminal trials. Moreover, the study will assess the influence of eyewitness evidence on legal proceedings, encompassing its function in ascertaining culpability or innocence and shaping jury verdicts. Additionally, it will explore relevant reforms and recommendations aimed at enhancing the dependability and precision of eyewitness testimony within the criminal justice system. This study aims to provide a thorough knowledge of the intricate nature of eyewitness evidence in criminal cases. It aims to offer significant insights for legal professionals, policymakers, and scholars who are interested in improving the reliability of the criminal justice system.



## **CHAPTER 2:**

# **PSYCHOLOGICAL FACTORS INFLUENCING**

# **EYEWITNESS TESTIMONY**

### **2.1 Introduction**

Eyewitness testimony is a fundamental aspect of criminal proceedings, frequently acting as a main form of evidence that influences the final judgments. Nevertheless, the credibility of such evidence is sometimes doubted because of the complex mechanisms of human memory and vision. This chapter explores the psychological elements that impact eyewitness testimony, revealing how memory and perception can be influenced by different cognitive processes and environmental events. By comprehending these elements, legal practitioners and policymakers can more effectively traverse the intricacies of eyewitness evidence in criminal justice procedures.<sup>6</sup>

Memory is not an infallible recording apparatus, but rather an intricate cognitive procedure that is prone to errors and distortions. Various variables might affect the process of encoding, storing, and retrieving memories, thereby influencing the precision of eyewitness evidence. Stress is a factor that has been demonstrated to hinder the process of memory consolidation and retrieval. During critical situations like observing a crime, increased stress levels can cause tunnel vision and narrowed focus, which may result in a decrease in the amount of information stored in memory. The phenomenon of weapon concentration demonstrates how the existence of a weapon can divert attention from other aspects of the incident, resulting in mistakes in eyewitness accounts. Moreover, the own-race bias indicates that people have a greater ability to identify faces from their own racial or ethnic group. This can lead to errors in identification when witnesses and suspects come from different racial backgrounds. The flexibility of memory is further emphasized by its vulnerability to post-event information and suggestive questioning. After an event, people may come across fresh information or narratives that can change their memory of the initial experience.

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<sup>6</sup> Supra Note 1

Memory contamination, a condition that might arise from media coverage, discussions with other witnesses, or suggestive questioning by law enforcement personnel, can occur.<sup>7</sup> The utilization of suggestive questioning strategies, such as employing leading or deceptive prompts, can also manipulate eyewitness testimony, causing it to become distorted. Research has demonstrated that the phrasing of inquiries can have a substantial impact on the precision and dependability of eyewitness testimonies, as suggestive questioning can result in the formation of false recollections and incorrect identifications. The cognitive interview technique was created to reduce the impact of leading questions. It focuses on using open-ended questions and retrieval cues to improve the accuracy of witness memory recall. Although there is a risk of mistakes and misrepresentations, eyewitness testimony remains a crucial factor in criminal prosecutions. Nevertheless, the dependability and precision of such testimony might significantly differ based on the specific conditions of the occurrence and the cognitive mechanisms underlying memory and perception. Legal professionals and jurors are required to meticulously assess the reliability of eyewitness testimony, taking into account criteria such as the coherence of statements, the existence of supporting evidence, and the likelihood of prejudice or susceptibility to influence.<sup>8</sup>

## **2.2 Cognitive processes affecting eyewitness memory**

Cognitive processes are essential in determining eyewitness memory, as they impact the way people encode, store, and recall information related to observed events. Gaining knowledge of these processes is crucial for understanding the dependability and precision of eyewitness evidence in criminal trials. Encoding is the initial stage in which sensory information from the environment is converted into a format that may be stored in memory. During the process of encoding, attention plays a crucial role in deciding the specific components of an event that are selected for processing and later stored in memory. Selective attention is the cognitive process that guides our focus towards stimuli that are relevant and important, while simultaneously filtering out information that is irrelevant or unimportant. Nevertheless, attention might be hindered by several

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<sup>7</sup> Supra Note 4

<sup>8</sup> Dr. S. L Vaya, Director and Additional Director, Institute of Behavioural Sciences, Gujarat Forensic Science University and Directorate of Forensic Sciences. Gandhinagar, Gujarat (Adapted from Unit 2, block 4 of BPCE021).

factors such as tension, distraction, and the presence of weapons, which can result in inadequate or distorted encoding of the event.<sup>9</sup> Moreover, encoding specificity has an impact on the thoroughness and complexity of memory encoding. Retrieval of information is usually more successful when individuals encode it in an environment that is rich in context, similar to the setting of the event. Encoding specificity can result in context-dependent memory, where retrieval is improved in situations that are similar to the original encoding context but hindered in different circumstances. After being encoded, sensory information is stored in memory for later retrieval. Memory storage entails the process of integrating information into both short-term and long-term memory systems. Short-term memory is responsible for retaining information for short durations, whereas long-term memory is responsible for storing information for longer durations. Rehearsal, elaboration, and emotional arousal are influential factors that might facilitate the transfer of information from short-term to long-term memory. This process strengthens memory traces and enhances recall accuracy. Nevertheless, memory storage is vulnerable to interference and deterioration over time. Interference arises when the recall of previously stored information is disrupted by the introduction of new information, resulting in memory distortion or loss. Decay is the process by which memory traces gradually weaken and fade away over time when there is no rehearsal or retrieval cues. Both interference and decay are factors that lead to the gradual loss of specific details and the alteration of memory over a period of time.<sup>10</sup> Retrieval refers to the act of obtaining information that has been stored in memory and bringing it into conscious awareness. Eyewitnesses gather information using several retrieval cues, including environmental cues, vocal prompts, and leading inquiries. Retrieval can be affected by retrieval cues that might introduce bias or alter memory, resulting in mistakes in eyewitness evidence. The misinformation effect is a frequently seen occurrence that impacts the process of retrieval. It refers to the situation when the memory of an initial event is altered due to exposure to incorrect information that occurs after the event. This phenomenon can be triggered by suggestion, interrogative prompts, or subsequent conversations, leading to the integration of inaccurate information into one's memory. Source monitoring mistakes occur when individuals mistakenly ascribe the origin of information, resulting in the mixing of correct and

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<sup>9</sup> Veeraraghavan, Vimala (2009). *Handbook of Forensic Psychology*. Select Scientific Publishers. New Delhi.

<sup>10</sup> Supra Note 4

incorrect details in memory.<sup>11</sup> Furthermore, the reconstructive nature of memory renders eyewitness testimony susceptible to memory distortion during the process of retrieval. Memory is not an exact copy of past events, but rather a process of rebuilding guided by schemas, norms, and expectations. Schemas are mental structures that categorize and structure information, influencing how we see, understand, and remember things. When individuals who have witnessed an event recall information, they have a tendency to complete missing pieces or recreate specific aspects using their pre-existing mental frameworks, which can result in memory inaccuracies or fabricated recollections.<sup>12</sup>

Aside from cognitive processes, many human variables, including age, intellect, and suggestibility, can also impact eyewitness memory. Children, older individuals, and individuals with lesser cognitive capacities may have a higher vulnerability to memory distortion or suggestibility. Hence, it is imperative to take into account the unique variations across individuals while evaluating the dependability of eyewitness testimony.

To summarize, cognitive processes have a substantial influence on eyewitness memory, affecting the initial processing of sensory information and the retrieval of stored memories. Comprehending these procedures and their susceptibilities is crucial for assessing the dependability and precision of eyewitness testimony in criminal proceedings. Researchers and legal practitioners can enhance their evaluation of the accuracy of eyewitness accounts and reduce the chances of memory distortion and false testimony by examining aspects such as attention, encoding specificity, interference, and retrieval cues.

### **2.3 Factors such as stress, weapon focus, and own-race bias**

Eyewitness testimony is susceptible to multiple circumstances that can impact the precision and dependability of the information supplied. Stress, weapon focus, and own-race bias are three crucial elements that have a substantial impact on eyewitness evidence.

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<sup>11</sup> Puranik, D.A., Joseph, S.K., Daundkar, B.B., Garad, M.V. (2009). Brain Signature profiling in India. It's status as an aid in investigation and as corroborative evidence – as seen from judgments. Proceedings of XX All India Forensic Science Conference, 815 – 822.

<sup>12</sup> Supra note 3.

- i. **STRESS:** Stressful circumstances can have a substantial effect on an individual's capacity to accurately encode, store, and recall information. During periods of intense stress, the body's innate fight-or-flight reaction can cause physiological alterations that impact cognitive performance. For instance, elevated heart rate and heightened adrenaline levels might hinder attention and concentration, resulting in a constricted perception and decreased ability to process peripheral details. Evidence indicates that increased levels of stress can hinder the process of memory consolidation, leading to fragmented or partial recollections of the observed incident. In addition, persons experiencing stress may be more prone to memory distortion and suggestibility. This is because stress can disrupt the retrieval process and make individuals more open to being influenced by false information.<sup>13</sup>

During criminal trials, witnesses who have experienced traumatic or highly stressful experiences may offer testimony that is less dependable because stress can negatively impact the process of encoding and retrieving memories. Legal professionals and jurors should take into account the influence of stress on the accuracy of eyewitness recollection when evaluating the reliability of testimony and understanding inconsistencies in statements.

- ii. **WEAPON:** Weapon concentration is the phenomenon where eyewitnesses concentrate their attention on weapons, like guns or knives, during a criminal incident, disregarding other details in the surrounding surroundings. The presence of a weapon might attract the witness's attention and elevate arousal levels, resulting in intensified concentration on the weapon and diminished attention to other elements of the incident. Studies have demonstrated that the existence of a weapon can hinder an eyewitness's capacity to precisely remember peripheral information, such as the appearance or behavior of the perpetrator. This behavior is caused by the cognitive impacts of arousal, which restricts attention and diminishes the ability to handle and store extra information. In criminal prosecutions concerning weapon-related offenses, eyewitness testimony can be undermined by weapon focus, as witnesses may

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<sup>13</sup> Scheck, B., Neufeld, P. & Dwyer, J. (2003). *Actual Innocence: When Justice Goes Wrong and How to Make It Right*, New American Library, New York.

offer elaborate accounts of the weapon while neglecting other crucial facts, such as the perpetrator's facial characteristics or attire. Legal professionals should take into account the possible influence of weapon focus while examining the credibility of eyewitness testimony and determining the importance of weapon descriptions in a court setting.

- iii. Own-race bias, sometimes referred to as the cross-race effect or other-race effect, is the tendency for individuals to have a greater ability to recognize faces of their own race compared to faces of other races. This prejudice can impact the precision of eyewitness identification and testimony, especially in settings with ethnic diversity, when witnesses and perpetrators may come from distinct racial or ethnic backgrounds. Extensive research has consistently shown that individuals exhibit higher accuracy in recognizing faces belonging to their own racial group as opposed to faces from different racial groups. This prejudice is thought to stem from a lack of exposure to people from different races and the tendency to focus on noticeable characteristics that are more prominent within one's own racial group. In criminal prosecutions where individuals of different races are involved, eyewitness testimony may be less dependable due to the impact of own-race bias. Witnesses may encounter difficulties in accurately discerning the identities of individuals from different racial backgrounds, resulting in misidentifications and unjust convictions. Legal professionals must be cognizant of the potential influence of own-race bias on eyewitness identification and should implement strategies to minimize its impact. This can be achieved by employing impartial lineup processes and educating jurors on the constraints of cross-racial identification.

Essentially, stress, weapon focus, and own-race bias are influential elements that can greatly impact the precision and dependability of eyewitness testimony in criminal prosecutions. When analyzing the reliability of testimony and the possibility of memory distortion and misidentification, legal practitioners, jurors, and researchers should take into account the cognitive and perceptual processes that underlie eyewitness recollection. By comprehending the impacts of these factors, anyone with a vested

interest in the criminal justice system can strive to enhance the impartiality and precision of eyewitness testimony in judicial processes.

## **2.4 Examination of the impact of post-event information and suggestive questioning**

The influence of post-event information and suggestive questioning on eyewitness evidence in India, as well as in other legal systems, is substantial and can greatly affect the dependability and precision of witness statements in criminal prosecutions. Post-event information encompasses all the specific data or accounts given to witnesses following the occurrence of the witnessed event, whereas suggestive questioning entails the utilization of leading or prejudiced questions during the investigation or interrogation phase.

- i. **Memory Contamination:** The process of incorporating erroneous or misleading details into an eyewitness's remembrance of an incident can occur due to the influence of post-event information and suggestive questioning. In India, like in other places, law enforcement agents, investigators, or even other witnesses may unintentionally or deliberately give false information to eyewitnesses during interviews or talks that occur after a crime. The acquisition of this information can influence the witness's recollection of the event, resulting in mistakes or distortions in their subsequent testimony.
- ii. **Misinformation Effect:** The misinformation effect is a phenomenon in which the memory of an individual regarding an initial event is altered due to exposure to inaccurate information after the event. In India, witnesses may encounter misinformation through several channels such as media coverage, social media platforms, or interpersonal discussions. The widespread dissemination of false or inaccurate information in the public sphere has the ability to impact how eyewitnesses see and remember an incident, which could result in inconsistencies between their initial views and their subsequent testimony.

- iii. Suggestive interrogation strategies, such as the use of leading questions or repetitive questioning, can also have an influence on the accuracy and reliability of eyewitness testimony in criminal trials conducted in India. Law enforcement agents or prosecutors may inadvertently influence witness responses by phrasing inquiries in a suggestive way or giving implicit hints about the expected answers. In India, there is a concern about the potential of false or coerced testimony due to suggestive questioning during interrogations, which might vary in procedures across different jurisdictions and investigating agencies.
- iv. Legal Implications: The influence of information provided after an occurrence and the use of suggestive questioning on the accuracy of eyewitness evidence has important consequences within India's criminal justice system. Erroneous or untrustworthy firsthand accounts stemming from memory pollution or suggestive interrogation can result in unjust convictions or miscarriages of justice. Legal professionals, including lawyers, judges, and juries, are required to meticulously assess eyewitness testimony, taking into account issues such as the dependability of the witness's recollection and the influence of external events or leading questions.
- v. Mitigation measures: To reduce the impact of post-event information and suggestive questioning on eyewitness testimony in India, law enforcement authorities, legal practitioners, and policymakers can employ a range of measures. These may encompass standardized interview protocols, training programs for law enforcement personnel and prosecutors regarding successful questioning techniques, and awareness campaigns aimed at educating the public about the fallibility of memory and the dangers of misinformation.



The influence of post-event information and suggestive questioning on eyewitness testimony in India is significant and should not be underestimated. Memory contamination, the disinformation effect, and suggestive questioning can all lead to mistakes and distortions in witness testimonies, which can have significant implications for the administration of justice. To tackle these issues, a strategy is needed that includes legal reforms, professional training, and public education programs. The goal is to promote fair and dependable eyewitness testimony in criminal cases in India.

## **2.5 Reliability and accuracy of eyewitness testimony in light of psychological findings**

Examining the dependability and precision of eyewitness testimony in relation to psychological discoveries uncovers an intricate interaction of cognitive mechanisms, social impacts, and environmental elements that can both strengthen and weaken the trustworthiness of witness statements.

Psychological study emphasizes the imperfections of human memory, showing that memory is not an exact representation of previous events but rather a process of reconstruction that is influenced by several circumstances. Witnesses frequently recreate memories by relying on schemas, assumptions, and expectancies, which can result in inaccuracies and distortions. Additionally, memory is susceptible to deterioration over time, and retrieval cues have the potential to influence recollections, leading to mistakes in eyewitness evidence.

Moreover, research on the impact of stress and emotional arousal on eyewitness memory demonstrates that heightened emotional states can have both positive and negative effects on recall. Optimal levels of arousal can aid in the process of encoding and increase the importance of important details, while excessive stress can result in tunnel vision, limited focus, and fragmented memory. Therefore, eyewitness evidence given in stressful situations may be less trustworthy since peripheral details are not encoded well and there is a higher likelihood of memory distortion.

Aside from personal cognitive processes, social factors such as post-event information and suggestive questioning can have a substantial effect on the reliability of eyewitness evidence. The misinformation effect illustrates how the presentation of deceptive information following an event can modify the recollection of the initial event, resulting in the inclusion of inaccurate particulars in eyewitness testimonies. Likewise, the use of suggestive questioning techniques during interviews or interrogations can influence witness replies, resulting in coerced or unreliable testimony.

Psychological research also identifies elements that can improve the dependability of eyewitness evidence. For instance, the application of cognitive interviewing techniques, which urge witnesses to recollect events in a methodical and unrestricted manner, has been demonstrated to enhance the precision and comprehensiveness of witness testimonies. Furthermore, implementing lineup techniques that involve double-blind administration and impartial lineup composition can decrease the likelihood of erroneous identifications and unjust convictions.

In general, psychology research emphasizes the importance of a detailed comprehension of eyewitness evidence within the criminal justice system. Although eyewitness testimony can be a crucial form of evidence in criminal prosecutions, it is important to acknowledge its limitations and vulnerabilities. Legal professionals, including lawyers, judges, and jurors, are required to consider the credibility of eyewitness testimony based on psychological research findings. This involves considering factors such as memory contamination, the impact of stress, social influences, and the use of best practices to improve the accuracy of witness accounts.

## **2.6 Concluding Remarks**

Conclusively, the analysis of psychological aspects that impact eyewitness evidence provides insight into the complex mechanisms that determine the dependability and precision of witness testimonies in legal proceedings. The malleable nature of human memory and the susceptibility of eyewitness testimony to external influences are underscored by memory distortion, which is affected by stress, post-event knowledge, and suggestive questioning. Stress, weapon focus, and own-race prejudice are important factors that highlight the necessity of carefully examining the conditions

underlying eyewitness observations and the possibility of memory inaccuracies.

Although cognitive flaws and social influences provide difficulties, eyewitness testimony remains an essential element in criminal trials. Nevertheless, legal professionals and decision-makers must approach the intricacies of eyewitness testimony with care, taking into account the cognitive processes that influence memory and perception. By using optimal methodologies, such as cognitive interviewing techniques and impartial lineup procedures, the dependability of eyewitness evidence can be improved and the likelihood of erroneous convictions can be diminished.

In order to guarantee reasonable and precise results in the criminal justice system, it is crucial to possess a comprehensive comprehension of the intricate psychological elements that impact eyewitness evidence. By incorporating findings from psychological research into judicial proceedings, stakeholders can strive to maintain the credibility of eyewitness testimony and protect the rights of individuals participating in criminal cases.

# **CHAPTER 3:**

## **LEGAL FRAMEWORK SURROUNDING EYEWITNESS**

### **TESTIMONY**

#### **3.1 Introduction**

India is the origin of the law of evidence. The Sakshi, also known as the “witnesses,” were considered by the Dharma Sastras to be a crucial means of determining the truth in disputed situations. Yajnavalkya, a philosopher from the seventh century BCE, wrote extensively about documented (lekhyā) and oral (abdaprama) evidence. In contrast to the present day, there were rigorous limitations on who was allowed to provide testimony in civil trials. A witness is a someone who possesses the necessary qualifications to provide testimony, either orally or in written form, whether it is in a court of law or any other location.<sup>14</sup> An eyewitness is a someone who has directly observed the accused individual committing the act.

Testimony provided by children, dependents, lunatics, women, or anyone in a state of dread was often unreliable. In order for their testimony to be considered valid, the remaining witnesses had to possess a strong moral character. There was a widespread belief that documentary evidence was more desirable than oral testimony since the latter could be easily manipulated. Upon closer examination of ancient laws, it becomes evident that there is a deliberate pattern of excluding witnesses with the intention of controlling their ability to testify and preventing individuals whose credibility may be legally challenged from participating. Conversely, the criteria for serving as a witness in a criminal trial were significantly less stringent. It was contended that crimes could potentially take place in remote settings, such as caves or woodlands, where gathering sufficient evidence would be difficult. In such cases, reliance on the testimony of accessible witnesses would be necessary. The British arrival in the Indian subcontinent

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<sup>14</sup> Navdeep Kadian, Testimony of Eyewitness And its Reliability in India: A Critical Analysis 8 IJNRD c244 (2023).

brought about significant changes in the way criminal prosecutions were conducted and evidence was gathered.

During the initial period of British governance, the courts in the Presidency towns adopted evidentiary processes derived from English common law. In certain areas, a blend of customary law and remnants of Islamic law were also employed. The Indian Evidence Act was enacted in 1872 and remains in force to this day. Witnesses are listed in Chapter IX of the Act, namely in Sections 118 to 134. According to Section 118, any capable individuals are permitted to provide testimony, unless the Court determines that they are unable to comprehend the questions asked or provide logical answers due to factors such as young age, advanced age, illness (physical or mental), or similar circumstances. Any individual who has personally witnessed an event can provide testimony during a legal proceeding, unless the court explicitly prohibits it based on the criteria specified in Section 118. The general principle is that, given that the eyewitness is bound by an oath, their testimony is presumed to be truthful unless it can be definitively disproven. When grave crimes such as murder, arson, or rape occur, it is of utmost importance that reliable and honest witnesses step forward. The issue lies in the fact that, while attempting to remember the trial, the majority of witnesses who have witnessed horrible events are often so overwhelmed with horror and trauma that their memory typically becomes unreliable. In addition, the majority of individuals do not sufficiently observe their environment to precisely remember minute details that constitute vital evidence, such as a phone call or a person they quickly caught sight of before it disappeared from the crime scene.

The jurisprudence of India recognizes and acknowledges the law of evidence. An examination of the existing legislation indicates that judges assign an undue level of importance to eyewitness testimony when establishing the guilt of a crime. If the reliability criterion is satisfied, a conviction can be secured based solely on the testimony of a single witness. If the court suspects that the witness is not completely reliable or has a personal interest in the case, they may require independent verification of their testimony.

The testimony is deemed invalid only when it is proven that a single witness is entirely untrustworthy. Moreover, it has been determined that courts should not dismiss a testimony from an eyewitness solely based on a disturbing perspective presented by a

medical witness in accordance with Section 45 of the Indian Evidence Act, 1872 (hereinafter referred to as the “Act”). In a separate case, the court explicitly said that the principle of “*falsus in uno, falsus in omnibus*” would not be relevant to eyewitness testimony. This decision was taken after a housewife, who had observed her husband’s murder, provided erroneous accounts of several aspects of the crime scene’s surroundings. Some people suggested that small flaws and errors in description that may have occurred during intense questioning should be forgiven when assessing the truthfulness of the testimony. Indian procedural law emphasizes the due process paradigm, although it is commendable that courts have established and organized criminal procedure to give substantial importance to eyewitness accounts. However, this has often resulted in a decrease in the rights of the accused. Occasionally, this technique has hindered the complete administration of justice, resulting in the neglect of the principle of “innocent until proven guilty.”

The testimony provided by eyewitnesses has consistently played a vital role in the legal framework. That is a common occurrence in criminal investigations and trials. The testimony supplied by eyewitnesses can be valuable in generating leads, securing convictions, and proving the innocence of the accused. However, it cannot be claimed that this evidence is the most efficient. However, even well-intentioned and compassionate witnesses are capable of making errors. Every individual is prone to errors, such as erroneously selecting the incorrect individual or failing to accurately identify the perpetrator. When providing information, a witness must be completely impartial, meaning they must not be influenced by any sort of coercion or deception.

Upon reviewing past Indian court judgments, it has been seen that eyewitnesses play a crucial role in the initial trial phase of a case’s progression. This is due to the fact that their identification might lead to the detention or conviction of the suspects. The acceptance of eyewitness testimony as substantial evidence is justified by the human brain’s capacity to effectively and dependably store and recall information about events. However, it is essential to verify the reliability and appropriateness of all individuals who serve as witnesses, regardless of whether they are eyewitnesses or not, prior to their testimony in a court of law.

### **3.2 Review of legal standards and guidelines governing the use of eyewitness testimony in criminal trials**

The Indian legal system has consistently seen eyewitness testimony as highly important. In Indian courts, eyewitness testimony is typically favored in the majority of criminal cases. However, it is well acknowledged that being persuasive does not necessarily mean being accurate. Contrary to the commonly held idea, eyewitness testimony is less dependable. A witness's credibility is compromised if they provide inconsistent comments at different locations and periods. The supporting paperwork must be thoroughly examined and considered in its entirety to determine if it should be given any significance. It is important for the court to exercise caution when following up on such a testimony and to seek other evidence to corroborate it. The true importance of forensic and medical research became apparent only after a thorough examination of the numerous deficiencies in eyewitness testimony. The Criminal (Amendment) Act of 2005 incorporated two additional provisions that empower the Investigating Officer to obtain DNA samples from both parties, with the aid and cooperation of a medical professional. However, these sections specifically address the investigation of sexual offenses.

During the 1980s, the introduction of DNA testing allowed for the precise identification of both the true culprits and individuals who were wrongly implicated for the crime, with an exceptional level of accuracy. Eyewitness testimony should not be dismissed purely based on the fact that the witness was a close relative of the deceased. The court has additionally determined that the testimony of these eyewitnesses must not be dismissed due to the fact that the witness had some connection to the deceased. Furthermore, it is widely considered that due to their close association, their testimonies necessitate meticulous scrutiny. If the findings are consistently congruent and devoid of any discrepancies, the testimony is considered adequate and acknowledged.<sup>15</sup>

The credibility of the eyewitness's comments is determined by their authenticity, consistency, and alignment with the statements of other witnesses, and they are accordingly considered in the evaluation process. However, it is imperative that the

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<sup>15</sup> Aparna Srinivasan, A Detailed Study on Eyewitness Testimony in India 120 IJPAM 983-995 (2018).

eyewitness refrains from employing coercion, fraud, or any other unethical methods while providing their remarks. An eyewitness must exhibit complete impartiality and remain unaffected by any form of coercion or influence when providing testimony. In a criminal proceeding, the burden of proof always lies with the prosecution, as they are responsible for demonstrating their case beyond any reasonable doubt. Given that evidence is a crucial component of the criminal procedure, it is impossible to impose punishment on the accused without adequate and legitimate proof. Irrespective of the sincerity of the accusations made against the accused, the evidence is the determining factor in a criminal process and is considered the paramount part of criminal justice. The pertinent provisions of the 1872 Act, included in Chapter IX of the statute, address particular attributes of the witnesses that are essential and indispensable for upholding justice and equity throughout legal procedures. These provisions enumerate the following: Competency, compellability, privileges, and quantity.

The sequence of witnesses presented and interrogated in relation to the civil and criminal proceedings, respectively, shall be determined by the legislation and customary procedure outlined in the relevant section of the 1872 Act.<sup>16</sup> The witnesses will undergo initial cross-examination, followed by re-examination, in accordance with the provisions outlined in the Act. Although the cross-examination is not required to focus solely on the facts addressed by the witness during their initial cross-examination, both the examination and cross-examination must be relevant to the important facts of the case. Additionally, there is a requirement to document the testimonies of all the witnesses that hold significant evidentiary weight.

The credibility of the eyewitness's comments is determined by their authenticity, consistency, and alignment with the testimonies of other witnesses, and they are accordingly given due regard. However, it is imperative that the witness refrains from employing any kind of coercion, hidden agenda, or deceitful strategies while providing their statements. A witness must maintain complete impartiality and remain unaffected by any form of coercion when providing testimony. As per the Apex Court, the testimony of an eyewitness cannot be disregarded only on the grounds that it might be false, without first performing the required investigation. Although there may be minor discrepancies in the accounts provided by different eyewitnesses, it is important not to

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<sup>16</sup> The Indian Evidence Act, 1872.



dismiss or discard any evidence presented in court only due to these embellishments. Due to inherent variations in individuals' responses or utterances, it is not feasible for various people to have comparable reactions or adhere to a constant pattern.

### **3.3 Landmark cases and legal precedents shaping the admissibility of eyewitness evidence**

The Indian Judiciary has made several rulings stating that the testimony of an eyewitness cannot be considered as the sole basis of evidence.

In *Madhu Madhuranatha & Anr vs the State Of Karnataka*<sup>17</sup>, the court defined a witness as an individual who is capable of providing information through oral or written statements given in court or in other circumstances. Typically, a witness is seen as independent unless they are performing under compulsion, deception.

*Manish v. State of Madhya Pradesh*<sup>18</sup>-

The recent pronouncement by the Madhya Pradesh High Court underscores the critical role of eyewitness testimony in criminal proceedings, albeit with a stringent caveat on its quality. The division bench's assertion that the statement of a single eyewitness can serve as the basis for conviction, provided it is of "sterling quality," reflects the delicate balance between upholding the principles of justice and ensuring the reliability of evidence. In the case at hand, where the conviction of the Appellant for murder relied primarily on the testimony of the Complainant, the Court meticulously examined the credibility of the eyewitness account. Despite the legal admissibility of single eyewitness testimony, the Court emphasized the need for unwavering confidence in its reliability. In this instance, the Court found the Complainant's testimony lacking in the necessary credibility to sustain the conviction. The observations made by the Court underscore the critical importance of scrutinizing eyewitness testimony with utmost care, particularly when it stands as the sole basis for conviction.

Furthermore, the Court's scrutiny extended to the admissibility of evidence obtained under Section 27 of the Evidence Act. The failure of the prosecution to establish the

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<sup>17</sup> 2013 SCC OnLine SC 1048.

<sup>18</sup> 2020 SCC OnLine MP 3964.

circumstances under which incriminating material was discovered, coupled with doubts surrounding the appellant's arrest, further weakened the prosecution's case. The Court's meticulous examination of procedural irregularities highlights the necessity for strict adherence to legal standards in criminal investigations and trial proceedings.

In acquitting the Appellant and setting aside the conviction, the Court reaffirmed the principle of "innocent until proven guilty" and underscored the significance of evidence beyond reasonable doubt. This case serves as a reminder of the judiciary's crucial role in safeguarding the rights of the accused and upholding the integrity of the criminal justice system, even in the face of legal presumptions. It also highlights the imperative for prosecutors to meet stringent evidentiary standards and ensure the reliability of evidence presented in court. Ultimately, this decision reinforces the principle that justice must be based not only on legal technicalities but also on the integrity and credibility of evidence.

### **Chhote Lal v. Roshtash<sup>19</sup>**

The case of Chhote Lal v. Roshtash, as deliberated by the Hon'ble Supreme Court of India, delineates the nuanced scrutiny that must accompany the testimony of a sole eyewitness, particularly when the witness is an interested party. The Court's analysis underscores the essential principle that convictions cannot rest solely on the testimony of a single witness, especially when circumstances cast doubt on the witness's credibility.

In this case, the appellant's status as the father of the deceased, coupled with a long-standing enmity with the accused, heightened the need for caution in assessing his testimony. The Court emphasized that while the testimony of a sole eyewitness can serve as grounds for conviction, it must be of impeccable quality and withstand rigorous scrutiny.

The Supreme Court's decision reinforces the notion that convictions must be based on evidence that proves guilt beyond a reasonable doubt. Through a meticulous

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<sup>19</sup> CRIMINAL APPEAL NO.2490 OF 2014

examination of the facts, evidence, and circumstances surrounding the case, the Court affirmed the High Court's decision to acquit the accused. The Court's acknowledgment of discrepancies in the witness's testimony underscores the importance of a thorough evaluation of evidence in upholding the integrity of the judicial process.

Furthermore, the Court's ruling provides clarity on the standards required for convictions based on sole eyewitness testimony. By reaffirming the necessity for corroborating evidence and the need to examine witness testimony with caution, the decision serves to safeguard against wrongful convictions and uphold the principles of justice and fairness.

In essence, the Supreme Court's judgment in *Chhote Lal v. Roshtash* serves as a reminder of the judiciary's duty to ensure the reliability and credibility of evidence in criminal proceedings. By upholding the High Court's decision and emphasizing the need for caution in assessing eyewitness testimony, the Court reaffirms its commitment to the principles of due process and the rule of law.

*Vikas Kumar Roorkewal v. State of Uttarakhand*<sup>20</sup>- The Supreme Court determined that witnesses play a crucial role in the criminal justice process. The court acknowledged the significance of witnesses in the criminal justice process. In the same case, it was determined that implementing legislation to protect witnesses can contribute to the fair conduct of a trial.

*Pratap Chauhan vs Ram Naik*<sup>21</sup>- There is no universally established criterion for how an individual should respond, as each person reacts to comparable circumstances in their own distinct manner.

*Bharwada Bhoginbhai Hirjibhai v. State of Gujrat*<sup>22</sup> The court ruled that it is generally unreliable to expect a witness to possess a photographic memory and recall all the particular details of an incident. Video recording is not being replayed in my thoughts. Typically, circumstances overwhelm witnesses. It is incorrect to think that cognitive abilities are naturally adjusted to perceive intricate information. Every individual have distinct observational aptitudes. Perception varies among individuals, as what one

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<sup>20</sup> 2011 SCC OnLine SC 149.

<sup>21</sup> 2000 SCC OnLine SC 1557.

<sup>22</sup> (1983) 3 Supreme Court Cases 217.

person may discern, another person may not. An individual's perception of a movement or object can vary, with one person being affected by it while another remains oblivious. Anticipating a witness to function as a human recording recorder is impractical. It is generally unrealistic to anticipate a witness to accurately remember a sequence of events that took place rapidly or within a brief timeframe. After being questioned, a witness may experience disorientation or confusion.

*Roop Kumar v. Mohan Thedani*<sup>23</sup> - This case emphasized the significance of valid evidence and delineated the situations in which hearsay testimony is not acceptable.

*Mangala Waman Karandikar (D) TR and LRs. vs. Prakash Damodar Ranade*<sup>24</sup> After considering the arguments from both sides, the Hon'ble Supreme Court concluded that the interpretation of a contract relies on the intentions explicitly stated by the parties. The court emphasized that determining the true meaning of a contract is an ongoing process for the courts. Upon careful examination of the parties' intentions, it was determined that there was a clear transfer of business from the appellant to the respondent. This transfer was not intended to be a lease or a license. According to sections 92 and 95 of the Indian Evidence Act, the proviso will only be used in circumstances where there is uncertainty due to the provisions of the document. In situations where the circumstances are straightforward and unambiguous, the stipulation would not be applicable.

*Bhimsha Subanna Pawar v. State of Maharashtra*<sup>25</sup> - The Bombay High Court considered the conditions in which the Court lacks independent evidence to support the conviction of the accused. In this instance, the High Court has determined that in the lack of independent evidence, it is necessary to thoroughly scrutinize the testimony of police witnesses. If their testimony is deemed trustworthy, it will serve as the foundation for the conviction of the accused. Therefore, since assault weapons were found in accordance with the accused's statement and there is no evidence indicating any hostility between the police inspector and the accused, it is reasonable and secure to accept the uncorroborated statement of the inspector regarding the discovered weapon.

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<sup>23</sup> 2003 SCC OnLine SC 472.

<sup>24</sup> 2021 SCC OnLine SC 371.

<sup>25</sup> 1995 SCC OnLine Bom 192.

*Bhagwan Singh v. The State of Punjab*<sup>26</sup>- It was that the testimony of a witness who is openly antagonistic towards the accused does not prevent the accused from being convicted, and the truthfulness of such testimony can be evaluated without completely disregarding it.

Hence, placing only trust upon eyewitness testimony for a conviction will result in a miscarriage of justice unless it is supported by additional corroborating circumstantial evidence. The judge must take preventative measures to ensure the reliability of eyewitness testimony and to make fair and unbiased conclusions.

### **3.4 The role of expert testimony in assessing eyewitness reliability**

Evaluating the dependability of eyewitness testimony is a crucial element of the criminal justice system, as it frequently functions as a key source of evidence in criminal prosecutions. Nevertheless, eyewitness evidence is intrinsically prone to error, as human memory can be susceptible to several influences such as stress, suggestion, and environmental conditions. In India, like in numerous other legal systems, expert testimony plays a crucial role in assessing the credibility of eyewitnesses. Although the Indian Evidence Act does not specifically mention the use of expert testimony in regard to eyewitness evidence, courts have acknowledged the significance of expert opinion in comprehending the intricacies of human memory and perception.

Professionals specializing in disciplines such as psychology, neurology, and forensic science possess vital knowledge regarding the cognitive mechanisms underlying memory formation, retention, and recall. They can elucidate the influence of elements such as stress and emotional arousal on memory retrieval, resulting in mistakes or distortions in eyewitness evidence. By comprehending the constraints of human memory, judges and juries can render more knowledgeable judgments regarding the trustworthiness and dependability of eyewitness testimonies.

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<sup>26</sup> (1976) 1 Supreme Court Cases 389.

Expert testimony is very valuable in elucidating the concept of memory contamination. Memory contamination refers to the phenomenon where the inclusion of incorrect or misleading information, either through post-event details or suggestive questioning, causes witnesses to absorb these inaccuracies into their memory of an incident. Professionals can offer valuable perspectives on the process of memory contamination and its impact on the reliability of eyewitness testimony. To mitigate the influence of memory contamination, courts can adopt measures to minimize its effects. This can be achieved by directing jurors to meticulously assess the reliability of eyewitness testimony, considering any possible sources of contamination.

Professionals can also offer advice on optimal methods for carrying out lineup operations to reduce the likelihood of incorrect identifications. Studies have demonstrated that conventional lineup methods, in which witnesses are presented with a lineup of suspects all at once, might result in a greater number of incorrect identifications as compared to sequential lineup processes. Courts can mitigate the likelihood of wrongful convictions resulting from erroneous eyewitness identifications by implementing sequential lineup protocols and adhering to other recommended best practices endorsed by experts.

Expert testimony plays a crucial role in elucidating the occurrence of own-race bias. Own-race bias is the inclination of individuals to have superior recognition recall for faces belonging to their own race in comparison to faces from other races.<sup>27</sup> This prejudice can result in inaccuracies in cross-racial identifications, especially in situations when witnesses and suspects belong to distinct racial or ethnic groups. Courts can limit the impact of own-race bias by comprehending the causes that contribute to it and ensuring that lineup procedures are done in a fair and unbiased manner.

Expert testimony not only offers insights into the issues that can impact the trustworthiness of eyewitnesses, but it also serves to educate judges and juries about the limitations of eyewitness testimony. Studies have demonstrated that juries frequently assign excessive importance to eyewitness testimony, even in cases where it is not trustworthy or contradicted by other evidence. Experts can contribute to the

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<sup>27</sup> The Own-Race Bias for Face Recognition in a Multiracial Society *available at*: [https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7067904/#:~:text=The%20own%2Drace%20bias%20\(ORB%3B%20also%20known%20as%20the,et%20al.%2C%202009\).](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7067904/#:~:text=The%20own%2Drace%20bias%20(ORB%3B%20also%20known%20as%20the,et%20al.%2C%202009).) (Last visited March 02, 2025).

correct evaluation and consideration of eyewitness testimony in the overall case by educating judges and jurors about the potential errors in human memory and the various elements that can influence the trustworthiness of eyewitnesses.

Although expert evidence can provide courts with significant insights into the intricacies of eyewitness reliability, it is crucial to acknowledge that experts are imperfect and that their opinions can be examined and contested. Defense attorneys have the right to question expert witnesses in order to assess the credibility of their opinions and uncover any potential biases or flaws in their evidence. The judge has the final responsibility to assess the reliability of expert testimony and decide whether it is relevant and can be admitted as evidence in the specific circumstances of the case.

Expert testimony is essential for evaluating the credibility of eyewitness testimony in criminal prosecutions in India. Experts can enhance courts' understanding of the constraints of eyewitness evidence and enable them to make more judicious determinations regarding its credibility and dependability by elucidating the cognitive mechanisms implicated in memory encoding, storage, and retrieval. Although expert testimony has its limitations, it serves as a vital tool for accurately assessing and taking into account eyewitness testimony within the broader context of a case.

### **3.5 Evaluation of legal reforms aimed at improving the reliability of eyewitness testimony**

The continuing discussion and debate in India revolve around legal reforms that seek to enhance the dependability of eyewitness evidence. India lacks specific legislation solely dedicated to eyewitness testimony. However, there have been demands for revisions to improve the credibility and accuracy of witness accounts in criminal prosecutions. These reforms involve all facets of the criminal justice system, such as procedural modifications, training initiatives, and awareness campaigns. In this article, we examine the significant legal changes suggested or enacted to tackle the difficulties linked to eyewitness evidence in India.

An important aspect of legal reform involves the adoption of uniform lineup processes. The process of identifying lineups plays a vital part in assessing the credibility of eyewitness evidence. However, conventional lineup procedures in India have frequently faced criticism due to their capacity to elicit inaccurate identifications. In response to this issue, there have been demands for the implementation of optimal methods suggested by specialists, such as carrying out lineups in a sequential manner rather than simultaneously and guaranteeing that lineup administrators are unaware of the suspect's identity. India can mitigate the potential for misidentifications and erroneous convictions stemming from faulty eyewitness testimony by implementing standardized lineup procedures.

Legal reforms have prioritized enhancing the caliber of police investigations and interviews to minimize the potential for suggestive questioning and memory contamination. Law enforcement officials frequently serve as the initial point of contact for eyewitnesses after a crime, and the way they conduct interviews can greatly influence the dependability of witness testimonies. Police officers can reduce the likelihood of suggestive questioning and gather witness testimony in a fair and unbiased manner by participating in training programs that focus on successful interviewing tactics, such as the use of open-ended questions and non-leading prompts.

Legal reform involves advocating for awareness initiatives that try to educate the public about the constraints of eyewitness evidence. Jurors and the general public often hold mistaken beliefs on the dependability of memory and perception, resulting in an over emphasis on eyewitness testimony during criminal cases.<sup>28</sup> India can promote a more critical and educated approach to witness evidence by increasing understanding of the fallibility of human memory and the various circumstances that can affect the trustworthiness of eyewitnesses. Additionally, these awareness programs can highlight the significance of verifying evidence and the necessity of exercising prudence when assessing eyewitness testimonies. Legal changes may entail the creation of specialized forensic units or expert panels to offer direction and support to judges and prosecutors in instances that involve intricate matters concerning eyewitness testimony. These units may comprise psychologists, forensic scientists, and other professionals who can provide valuable insights into the cognitive processes related to memory and

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<sup>28</sup> Gary L. Wells, et. al., *Eyewitness Evidence: Improving its Probative value* 7 PSPI 45-75 (2006).



perception. In order to guarantee that witness testimony is thoroughly assessed and taken into account within the broader context of a case, India can achieve this by granting judges and prosecutors access to expert advice and assistance.

Legal reforms may entail the implementation of legislative measures designed to protect the rights of witnesses and defendants in criminal prosecutions. One such measure is to implement procedures that safeguard witnesses against intimidation or coercion while they are being investigated. Furthermore, it is imperative to implement systems that guarantee defendants' access to legal counsel and the chance to contest eyewitness testimony through cross-examination and other appropriate methods. Legal changes in India seek to enhance the dependability of eyewitness evidence by addressing multiple facets of the criminal justice system, including as lineup protocols, police inquiries, public awareness initiatives, and the creation of dedicated forensic units. India can mitigate the possibility of unjust convictions arising from faulty eyewitness testimony and safeguard the rights of witnesses and defendants in criminal proceedings by enacting these measures. Despite existing limitations, ongoing endeavors to improve the credibility and precision of witness testimonies will help to a more equitable and efficient criminal justice system in India.

### **3.6 Concluding Remarks**

Ultimately, the legal structure pertaining to eyewitness testimony in India has undergone a gradual transformation, incorporating elements from old customs to contemporary legal concepts. Although eyewitness evidence is acknowledged as a vital component in criminal cases, it is subject to inherent obstacles and limits that affect its veracity. The Indian Evidence Act of 1872 establishes the fundamental rules that govern the acceptability and assessment of witness statements, with a focus on qualities such as competence, genuineness, and coherence.

Landmark court decisions and legal precedents have influenced the criteria for accepting eyewitness evidence, highlighting the significance of supporting evidence and emphasizing the necessity of carefully examining witness testimony. Although

eyewitness testimony remains important in the legal system, judges acknowledge the possibility of mistakes and the need for supplementary evidence to strengthen convictions. Expert testimony has become a crucial method for evaluating the trustworthiness of eyewitness evidence, providing significant insights into the intricacies of human memory and perception. By integrating expert opinion, courts can enhance their ability to assess the credibility of witness testimony and reduce the likelihood of erroneous convictions. Legal reforms targeting the enhancement of the dependability of eyewitness evidence involve a range of activities, such as implementing uniform lineup processes, strengthening police investigations, conducting awareness campaigns, and establishing specialist forensic units. These reforms aim to tackle the difficulties related to eyewitness evidence and guarantee a just and efficient criminal justice system in India.

Ultimately, despite the existence of obstacles, continuous endeavors to improve the reliability and precision of eyewitness evidence would aid in achieving a fairer dispensation of justice in India. India can enhance the integrity of its justice system and safeguard the rights of witnesses and defendants by enacting these reforms and embracing developments in forensic science and expert testimony.

## **CHAPTER 4:**

# **CHALLENGES AND CONTROVERSIES IN USING**

# **EYEWITNESS TESTIMONY**

### **4.1 Introduction:**

Eyewitness testimony has long been considered a cornerstone of criminal justice systems worldwide, including in India. Its perceived reliability often plays a crucial role in determining the guilt or innocence of the accused. However, the use of eyewitness testimony is not without its challenges and controversies. In this chapter, we delve into the complexities surrounding the utilization of eyewitness testimony within the framework of the Indian Evidence Act.

Under the Indian Evidence Act of 1872, eyewitness testimony holds significant weight in court proceedings, as it is commonly viewed as direct evidence of a crime. Nevertheless, scholars and legal experts have raised concerns regarding its reliability due to various factors such as memory distortion, suggestibility, and the potential for misidentification. As we explore these challenges and controversies, it becomes evident that while eyewitness testimony can be compelling, its susceptibility to errors poses significant risks to the administration of justice. Through a critical examination of case law, psychological research, and procedural reforms, this chapter aims to shed light on the complexities inherent in relying on eyewitness testimony and the implications for fair trial rights in the Indian legal system.

### **4.2 Significant limitations of eyewitness testimony**

Eyewitness testimony is crucial in the administration of justice, although it is often an unreliable form of evidence due to many limitations. A survey conducted under English Law revealed that erroneous eyewitness testimonies are responsible for almost 75% of

unjust convictions. Similar situations occur within the Indian Legal System, where false convictions occur annually.

Various circumstances can compromise the accuracy of eyewitness reports. The accuracy of eyewitness identification is significantly influenced by circumstances such as experiencing high levels of stress at the crime scene or throughout the identification procedure.

- Anxiety or distress caused by the presence of firearms at the location of the criminal incident.
- The perpetrator employs a mask, wig, or any form of disguise.
- Any form of racial discrepancy between the witness and suspect.
- Limited observation duration by the witness during the occurrence of a criminal act or identification procedure.
- Failure to comply with witness observation.
- Absence of any distinctive attributes of the suspect, such as tattoos or marks.

### **4.3 The lack of credibility of eyewitness testimony**

Various factors influence the accuracy of eyewitness evidence. Despite its crucial function in the justice delivery system, there are numerous circumstances that can impact the accuracy of eyewitness testimony. This results in the eyewitness being unreliable.

#### **4.3.1. Concentrate on the weapon.**

Eyewitnesses typically have a natural inclination to concentrate their attention on the weapon used by the perpetrator. When an individual is at the location of a criminal incident, their attention is primarily directed towards the weapon employed in the offense. This includes observing the weapon being held by another person, noting

details such as its size, color, type, and shape, as well as identifying if the weapon is aimed at them or another victim.<sup>29</sup>

However, as a result of weapon focus, the mind fails to register specific information about the individuals responsible. Typically, a witness is able to remember all the specific characteristics of the weapon, but struggles to recollect precise details about the person responsible. The presence of weapon focus is a contributing cause to the lack of trustworthiness in eyewitness testimony.

#### **4.3.2. A highly stressful setting**

At the crime scene, individuals are either victims or not, and they experience significant levels of stress. Intense stress triggers our mind and body to enter survival mode, causing our attention to shift towards self-preservation rather than fixating on the person causing the stress. The presence of a stressful setting diminishes an individual's capacity to accurately perceive and subsequently remember an event. Occasionally, individuals may experience a state of numbness due to their victimhood, which impairs their capacity for observation.<sup>30</sup>

#### **4.3.3. Psychological distress**

Experiencing traumatic conditions causes a mental shock in both the victim and the witness, resulting in a decrease in the accuracy of their observations. Any terrible event, such as murder, rape, assault, or robbery, can cause psychological trauma in individuals. Psychological trauma significantly influences individuals' mental state, causing the victim or witness to perhaps be unable to accurately perceive the true identity of the perpetrator involved in the criminal act. When the testimony of an eyewitness is documented, the reliability of such testimonies may be limited.<sup>31</sup>

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<sup>29</sup> Supra Note 2

<sup>30</sup> Supra Note 9

<sup>31</sup> Wells, G.L. & Olson, E.A. (2003). Eyewitness testimony, *Annual Review of Psychology* 54, 277–295.

#### **4.3.4. Memory in humans**

The human brain encodes and stores memories as fragmented and discrete elements. Even while traversing a street, the human brain finds it exceedingly difficult to commit all the intricate features to memory. The brain encodes information in discrete units known as bits and subsequently compensates for any missing details when memory retrieval is unsuccessful. Similarly, when the police investigate a situation and question the witness for information, the mind is unable to accurately remember specific events and instead fills in the gaps with its own assumptions. This frequently results in the incorrect identification of the defendant.<sup>32</sup>

Another facet of this concern is that human memory begins to deteriorate over time. Over time, memories gradually diminish and begin to disintegrate. Frequently, when memories are recollected, the brain itself interprets the missing pieces of information, resulting in incorrect identification and misinterpretation.

#### **4.3.5. Indicative identification**

Suggestive identification is a significant contributing element to the limitations of eyewitness evidence. Suggestive identification refers to the procedure in which the witness is presented with photos that are designed to lead or influence their identification of the offender. The manner in which the investigator introduces the culprit to the witness might have a significant impact and influence on the process of identification.<sup>33</sup>

#### **4.3.6. Inefficiency in the Indian justice delivery system**

In India, the frequent occurrence of delays in the judicial process leads to a decrease in the reliability of eyewitness testimony over time due to the degradation of human memory. As time passes, human memory diminishes, which frequently results in

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<sup>32</sup> Benton, T.R., Ross, D.F., Bradshaw, E., Thomas, W.N. & Bradshaw, G.S. (2006). Eyewitness memory is still not common sense: comparing jurors, judges and law enforcement to eyewitness experts, *Applied Cognitive Psychology* 20, 115–129

<sup>33</sup> Kassir, S.M. & Barndollar, K.A. (1992). On the psychology of eyewitness testimony: a comparison of experts and prospective jurors, *Journal of Applied Social Psychology* 22, 1241–1249

erroneous convictions. In the case of *Daya Singh v. the State of Haryana*, the accused was arrested in 1988. However, when the identification parade was scheduled to take place, the accused declined to participate. As a result, the witnesses were able to identify the accused only after 8 years had passed since the incident.

Such a delay can result in a significant miscarriage of justice and undermine the reliability of eyewitness testimony.

#### **4.3.7. Identification procedure error**

Errors in the identification procedure might sometimes result in wrongful convictions. Misidentification can occur when a witness is unable to observe the culprit due to an obstruction or when the witness is confused in identifying the perpetrator among other individuals who share similar features that the witness remembers. The proximity between the culprit and witness is a crucial factor, as details are easier to perceive and remember when observed up close rather than from a significant distance. Distant observations can result in errors during the process of identification.<sup>34</sup>

#### **4.3.8. False or manipulative witnesses**

Oftentimes, the court is misled by the presence of counterfeit witnesses in the case. Furthermore, it is often the case that witnesses become entangled in legal proceedings due to coercion, intimidation, or excessive manipulation. Occasionally, the parties involved in a dispute may employ fraudulent witnesses with the explicit purpose of unjustly convicting the other parties. Eyewitness testimony can also contribute to false convictions and miscarriages of justice.

### **4.4 Comparative evidentiary worth of eyewitness testimonies vs forensic reports**

Under the Indian Legal System, eyewitness testimony holds great significance. Eyewitness testimony is highly valued by the court in the majority of criminal cases. Prior to this, the Indian Evidence Act of 1872 and the Code of Criminal Procedure of 1973 did not have any explicit legal requirements regarding the acceptance of science and technology or forensic science findings as evidence.

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<sup>34</sup> Supra Note 9

Upon examining the limitations of eyewitness testimony and recognizing the significance of forensic and medical science, forensic science was thereafter attributed with enhanced evidential worth. Following the enactment of the Criminal Procedure Code (Amendment) Act in 2005, two additional provisions were introduced. These sections grant the investigating officer the authority to get a DNA sample from both the accused and the victim, with the assistance of a medical practitioner. However, these parts primarily pertain to a medical examination conducted in instances of sexual offenses.<sup>35</sup>

Currently, forensic or DNA reports are not highly regarded as valuable evidence. Often, judges reject its inclusion due to legal or constitutional prohibitions, and instead give preference to the statements of witnesses. Enhancing the evidentiary value of forensic reports, in conjunction with eyewitness testimony, would effectively diminish the likelihood of erroneous convictions.

They play a significant role in influencing the outcome of cases involving the accused. However, other factors contribute to its lack of reliability, often resulting in erroneous convictions. The inadmissibility of forensic reports non court trials places the outcome of the case solely on eyewitness testimonies and other forms of evidence. The court depends on the testimony of eyewitnesses who have sworn an oath, and if their testimony is misleading, it can result in the wrongful conviction of innocent individuals.

Legal cases that rely exclusively on eyewitness statements are more likely to result in false convictions. The reasons contributing to its drawback are the underlying causes of its failure in specific instances. Forensic science reports are more dependable than eyewitness statements due to the potential for eyewitnesses to be misleading, while forensic reports have a lower likelihood of inaccuracy. Various factors, including memory deterioration, lack of observant, mental shock, trauma, and other influences, contribute to the unreliability of eyewitness statements. This creates a pathway for erroneous convictions, which in turn results in a miscarriage of justice when an individual is wrongly convicted.

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<sup>35</sup> Supra note 2



## **4.5 Identification and analysis of challenges posed by eyewitness testimony in criminal trials**

Eyewitness testimony serves as a critical component of criminal trials, often influencing judicial outcomes profoundly. However, its utilization is fraught with challenges that can potentially compromise the reliability and accuracy of the testimony. In the context of the Indian Evidence Act, these challenges manifest in several key areas.

Firstly, memory distortion represents a significant hurdle in the accurate recall of events by eyewitnesses. Human memory is inherently fallible, susceptible to various cognitive biases, and influenced by external factors such as stress, leading to the reconstruction of events that may differ from reality. Consequently, discrepancies between the eyewitness's recollection and the actual occurrence of events can arise, undermining the credibility of the testimony.<sup>36</sup>

Moreover, eyewitness testimony is susceptible to suggestibility, wherein external influences, such as leading questions from law enforcement or media exposure, can inadvertently shape or distort the witness's memory. This phenomenon is particularly concerning in cases where suggestive identification procedures are employed, potentially leading to the misidentification of suspects and wrongful convictions.

Additionally, the phenomenon of cross-racial or cross-cultural identification further complicates the reliability of eyewitness testimony in diverse societies like India. Research suggests that individuals may experience difficulty accurately identifying individuals from racial or ethnic backgrounds different from their own, leading to higher rates of misidentification and wrongful accusations.

Furthermore, the unreliability of eyewitness testimony is exacerbated by the lack of stringent procedural safeguards in the Indian legal system. Inadequate measures to prevent suggestive identification procedures, coupled with limited opportunities for

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<sup>36</sup> Steblay, N.M. (1992). A meta-analytic review of the weapon focus effect, *Law and Human Behavior* 16, 413–424

effective cross-examination, can contribute to the perpetuation of erroneous convictions based on flawed eyewitness accounts.<sup>37</sup>

The reliability of eyewitness evidence has been a subject of controversy and scrutiny in the legal and psychological communities alike. Within the framework of the Indian Evidence Act, these controversies highlight fundamental issues that challenge the credibility of eyewitness testimony and its implications for the administration of justice.

#### **4.6 Examination of controversies surrounding the reliability of eyewitness evidence**

One of the primary controversies surrounding the reliability of eyewitness evidence revolves around the fallibility of human memory. Research in cognitive psychology has demonstrated that memory is not a static recording of events but rather a reconstructive process influenced by various factors, including emotional arousal, post-event information, and individual differences. As a result, eyewitnesses may unintentionally distort their memories, leading to inaccuracies in their recollection of critical details. This phenomenon raises concerns about the validity of eyewitness testimony and its potential to mislead judges and juries in criminal trials.

Moreover, the impact of eyewitness identification procedures on the reliability of testimony has generated considerable controversy. Traditional lineup and photo array methods, often used by law enforcement agencies in India, have been criticized for their susceptibility to suggestive influences and biases. Research indicates that witness identifications can be influenced by the manner in which lineup procedures are conducted, leading to false identifications and wrongful convictions. The absence of standardized and rigorously controlled identification protocols in the Indian legal system exacerbates these concerns, further undermining the reliability of eyewitness evidence.<sup>38</sup>

Furthermore, the issue of cross-cultural and cross-racial identification adds another layer of complexity to the reliability of eyewitness testimony. In a diverse country like India, where individuals belong to various ethnic and cultural backgrounds, the

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<sup>37</sup> Technical Working Group for Eyewitness Evidence (1999). Eyewitness Evidence: A Guide for Law Enforcement [Booklet], United States Department of Justice, Office of Justice Programs, Washington, DC.

<sup>38</sup> Supra Note 1

accuracy of eyewitness identifications may be compromised when witnesses attempt to recognize individuals from different racial or ethnic groups. Studies have shown that people tend to have greater difficulty identifying individuals of races other than their own, leading to increased rates of misidentification and potential miscarriages of justice.

In light of these controversies, it is imperative for legal practitioners, policymakers, and scholars in India to critically evaluate the reliability of eyewitness evidence and implement reforms aimed at mitigating the inherent risks associated with its use in criminal trials. By incorporating scientific insights from cognitive psychology and adopting best practices in eyewitness identification procedures, the Indian legal system can enhance the reliability and credibility of eyewitness testimony, thereby promoting fair and just outcomes in criminal proceedings.

#### **4.7 Discussion on wrongful convictions and miscarriages of justice attributed to erroneous eyewitness identifications**

Wrongful convictions and miscarriages of justice attributed to erroneous eyewitness identifications represent a sobering reality within the criminal justice system, both globally and within the framework of the Indian legal system. These cases highlight the profound impact of flawed eyewitness testimony on the lives of individuals wrongfully accused and convicted of crimes they did not commit. In India, as in other jurisdictions, wrongful convictions stemming from erroneous eyewitness identifications have garnered significant attention and concern. Numerous cases have emerged where individuals have been convicted based solely or primarily on the testimony of eyewitnesses, only for subsequent evidence to reveal their innocence. Such miscarriages of justice underscore the inherent risks associated with relying on eyewitness testimony in criminal trials and raise pressing questions about the reliability and credibility of this form of evidence.<sup>39</sup>

Several factors contribute to wrongful convictions linked to erroneous eyewitness identifications, including memory distortion, suggestibility, and lineup procedures fraught with suggestive influences. Research indicates that human memory is prone to

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<sup>39</sup> Nelson, Kally & Bowman-Fowler, Nicci & Berkowitz, Shari & Loftus, Elizabeth. (2009). Eyewitness Testimony. 10.1002/9780470061589.fsa264.

errors and biases, particularly in high-stress situations commonly encountered during criminal events. Moreover, the manner in which identification procedures are conducted, such as suggestive lineup instructions or the presence of biased lineup fillers, can significantly influence witness identifications and contribute to false accusations.

Additionally, issues of cross-racial or cross-cultural identification further exacerbate the risk of wrongful convictions based on erroneous eyewitness identifications. In a multicultural and multiethnic society like India, where individuals come from diverse backgrounds, the potential for misidentifications increases when witnesses attempt to recognize individuals from different racial or ethnic groups. Studies have shown that people tend to have greater difficulty accurately identifying individuals of races other than their own, leading to a higher likelihood of mistaken identifications and wrongful convictions.

The consequences of wrongful convictions attributed to erroneous eyewitness identifications are profound, not only for the wrongfully convicted individuals and their families but also for the integrity and credibility of the criminal justice system as a whole. Addressing these issues requires comprehensive reforms aimed at enhancing the reliability of eyewitness testimony, including the implementation of standardized and scientifically validated identification procedures, the adoption of rigorous safeguards to prevent suggestive influences, and increased awareness among legal practitioners and law enforcement personnel about the limitations and risks associated with eyewitness evidence. Only through concerted efforts to address these challenges can the Indian legal system mitigate the incidence of wrongful convictions and uphold the principles of fairness, accuracy, and justice in criminal proceedings.<sup>40</sup>

#### **4.8 Exploration of efforts to mitigate the impact of eyewitness misidentification through procedural safeguards and reforms**

Efforts to mitigate the impact of eyewitness misidentification through procedural safeguards and reforms have gained traction globally, including within the Indian legal

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<sup>40</sup> Supra Note 2

system. Recognizing the inherent risks associated with relying solely on eyewitness testimony, policymakers, legal practitioners, and scholars have advocated for the implementation of measures aimed at enhancing the reliability and credibility of eyewitness evidence. One crucial aspect of mitigating the impact of eyewitness misidentification involves the adoption of standardized and scientifically validated identification procedures. In recent years, advancements in cognitive psychology have informed the development of best practices in eyewitness identification, emphasizing the importance of conducting lineup procedures in a double-blind fashion, wherein both the administrator and the witness are unaware of the suspect's identity. By minimizing the potential for suggestive influences and biases, double-blind lineup procedures help reduce the risk of erroneous identifications and wrongful convictions.<sup>41</sup>

Moreover, the use of sequential lineup procedures, wherein witnesses view lineup members one at a time rather than simultaneously, has been shown to enhance the accuracy of identifications and decrease the likelihood of false alarms. Research suggests that sequential lineups reduce the influence of relative judgments among lineup members, thereby promoting more reliable eyewitness identifications. In addition to procedural reforms, efforts to mitigate the impact of eyewitness misidentification entail increasing awareness among legal practitioners, law enforcement personnel, and the general public about the limitations and risks associated with eyewitness testimony. Training programs and educational initiatives aimed at enhancing the understanding of memory processes, cognitive biases, and identification procedures can help empower stakeholders to critically evaluate eyewitness evidence and implement best practices in criminal investigations and trial proceedings.<sup>42</sup>

Furthermore, the establishment of innocence projects and wrongful conviction review mechanisms has played a pivotal role in identifying and rectifying wrongful convictions attributed to erroneous eyewitness identifications. These initiatives facilitate the post-conviction review of cases based on newly discovered evidence, including DNA testing, eyewitness recantations, or the emergence of alternative suspects, thereby contributing

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<sup>41</sup> Supra Note 1.

<sup>42</sup> Veeraraghavan, Vimala (2009). Handbook of Forensic Psychology. Select Scientific Publishers. New Delhi.

to the exoneration of wrongfully convicted individuals and the prevention of future miscarriages of justice.

## **4.9 Conclusion**

In conclusion, the chapter has provided a comprehensive exploration of the challenges, controversies, and efforts to mitigate the impact of eyewitness testimony in criminal trials within the framework of the Indian Evidence Act. Despite its perceived importance as direct evidence, eyewitness testimony is inherently fallible, susceptible to memory distortion, suggestibility, and cross-cultural identification, thus posing significant risks to the administration of justice. The discussion has highlighted the profound implications of wrongful convictions and miscarriages of justice attributed to erroneous eyewitness identifications, underscoring the urgent need for procedural safeguards and reforms. Through the adoption of standardized identification procedures, such as double-blind and sequential lineups, and the implementation of educational initiatives to increase awareness among stakeholders, the Indian legal system can enhance the reliability and credibility of eyewitness evidence. Moreover, the establishment of innocence projects and wrongful conviction review mechanisms plays a crucial role in rectifying miscarriages of justice and preventing future wrongful convictions. By fostering a commitment to fairness, accuracy, and justice, these efforts contribute to the integrity and credibility of the criminal justice system in India. In moving forward, continued collaboration between legal practitioners, policymakers, scholars, and advocacy groups is essential to address the complexities surrounding eyewitness testimony effectively. By embracing evidence-based practices and upholding the principles of fairness and due process, the Indian legal system can navigate the challenges posed by eyewitness testimony and safeguard the rights of the accused, thereby ensuring the equitable administration of justice for all.

## **CHAPTER 5:**

# **STRATEGIES FOR ENHANCING THE RELIABILITY**

# **OF EYEWITNESS TESTIMONY**

### **5.1 Introduction**

The credibility of eyewitness testimony is a necessary component of the criminal justice system, as it frequently acts as a key form of evidence in criminal prosecutions. Nevertheless, a multitude of variables might impact the precision of testimonies from individuals who witnessed a crime, resulting in possible inaccuracies and unjust verdicts. To address these issues, several ways have been suggested to improve the dependability of eyewitness evidence. Gaining insight into the variables that influence eyewitness testimony is necessary for devising efficient tactics to enhance its dependability. Studies have discovered various elements, such as memory distortion, suggestibility, and the influence of stress and trauma, that might affect the precision of eyewitness testimonies. Through careful analysis of these variables, politicians and legal professionals can create specific measures to reduce their impact and improve the dependability of eyewitness evidence. Implementing consistent lineup processes is a necessary method for improving the trustworthiness of eyewitness evidence. The processes used for organizing lineups are of utmost importance in the process of eyewitness identification. However, the accuracy of identifications can be greatly influenced by the many ways in which lineups are conducted. Implementing standardized processes, such as employing double-blind administration and presenting lineup members sequentially, can effectively reduce the likelihood of biased identifications and enhance the dependability of eyewitness testimony.

Additionally, it is necessary to educate legal experts, law enforcement personnel, and jurors about the constraints of eyewitness testimony in order to encourage the careful assessment and understanding of eyewitness statements. Training programs can equip persons in the criminal justice system with the necessary knowledge and skills to appropriately evaluate the credibility of eyewitness testimony. Moreover, disseminating information to the general public regarding the variables that can impact the accuracy

of eyewitness recollection can effectively diminish the probability of erroneous convictions resulting from untrustworthy eyewitness testimonies. This chapter will examine different approaches to improve the dependability of eyewitness evidence, such as implementing standardized lineup processes, implementing educational and training programs, and conducting public awareness campaigns. Through an analysis of the efficacy of these tactics and their possible influence on the criminal justice system, we can get useful knowledge on enhancing the dependability and precision of eyewitness testimony in legal procedures.

## **5.2 Best practices and recommendations for improving the reliability of eyewitness testimony**

Enhancing the dependability of eyewitness testimony is necessary in legal processes. Scientific study has revealed several recommended practices and recommendations to improve the accuracy of eyewitness evidence. An important suggestion is for law enforcement authorities to document a witness's level of confidence when identifying a suspect, as this first evaluation can influence the credibility of their evidence. Moreover, it is necessary to provide jurors with education regarding the constraints of eyewitness recall and the various factors that can impact its precision.<sup>43</sup>

Testimony from experts who utilize scientific frameworks can assist jurors in comprehending the intricacies of eyewitness recollection and enable them to make well-informed judgments regarding witness identification. In order to enhance the precision of eyewitness testimony, law enforcement should strictly follow meticulous protocols that reduce suggestive interviewing techniques and prevent the contamination of witness testimonies through discussions with other witnesses. It is essential to record many aspects that can impact the accuracy of witness testimonies, including lighting circumstances, proximity to the perpetrator, and duration of exposure. It is necessary to take into account system elements that can influence witness testimonies, such as the existence of firearms or the use of alcohol or drugs by witnesses. In order to accomplish this objective, a number of optimal methods and suggestions have been established through the analysis of research results and expert viewpoints. These procedures are designed to reduce the likelihood of memory distortion, suggestion, and bias, therefore

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<sup>43</sup> Supra note 8



improving the accuracy of eyewitness identifications and decreasing the chances of false convictions.<sup>44</sup> Utilizing standardized lineup techniques is a highly recommended method for enhancing the dependability of eyewitness evidence. Studies have demonstrated that changes in the way lineups are conducted can have a substantial effect on the precision of eyewitness identifications. In order to deal with this problem, numerous legal countries have implemented standardized protocols, such as the use of double-blind lineup administration and the sequential display of lineup members. These approaches enhance the reliability of eyewitness identifications by minimizing suggestive influences. This is achieved by ensuring that lineup administrators and witnesses are unaware of the suspect's identity, and by presenting lineup members individually rather than all together.

It is necessary to provide education to law enforcement personnel, legal professionals, and jurors regarding the various elements that can impact eyewitness recollection. This will help foster the development of critical assessment and understanding of eyewitness testimony. Training programs can equip persons in the criminal justice system with the necessary knowledge and skills to appropriately evaluate the credibility of eyewitness testimony. These programs can decrease the probability of wrongful convictions caused by faulty eyewitness testimony by increasing awareness of the limitations of eyewitness recall and the possibility for memory distortion.

One effective method for enhancing the dependability of eyewitness testimony is to employ cognitive interview techniques during the investigative procedure. Cognitive interviews aim to improve memory retrieval by prompting witnesses to provide comprehensive and precise descriptions of events. These methods entail posing open-ended inquiries, enabling witnesses to provide information using their own language, and reducing the utilization of leading or suggestive cues. Studies have demonstrated that the implementation of cognitive interview techniques can enhance the amount and caliber of information offered by eyewitnesses, resulting in more precise identifications and mitigating the likelihood of memory distortion.<sup>45</sup>

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<sup>44</sup> Otgaar H, Howe, M.L., Sauerland, Peters M, And Raymaekers L. (2013). Developmental trends in different types of spontaneous false memories: implications for the legal field. *Behavioral Science and Law*. SepOct;31(5):666-82.

<sup>45</sup> Loftus, E. F., Miller, D. G. & Burns, H. J. (1978). Semantic integration of verbal information into a visual memory. *Human Learning and Memory*, 4, 19-31.

It is necessary to establish measures to prevent against the use of suggestive questioning and memory contamination in order to maintain the dependability of eyewitness testimony during the investigative procedure. Law enforcement officers should get training to refrain from employing leading or suggestive questions during witness interviews, as these approaches might result in the unintentional inclusion of inaccurate information in eyewitness testimonies. Furthermore, it is important to establish protocols to reduce the risk of contamination from discussions between witnesses or exposure to information after the occurrence. Investigators can maintain the reliability and accuracy of eyewitness evidence by reducing the potential for suggestive influences and memory contamination.<sup>46</sup>

It is imperative to raise public knowledge on the constraints of eyewitness evidence in order to minimize the probability of erroneous convictions. Public awareness campaigns can inform persons about the various elements that might impact eyewitness recall, including stress, trauma, and the consequences of suggestive questioning. These initiatives can enhance jurors' ability to assess eyewitness testimony and make well-informed judgments in criminal trials by raising awareness about the potential unreliability of eyewitness recollection.

It is necessary to foster collaboration among researchers, practitioners, and policymakers in order to create evidence-based practices and regulations that can enhance the dependability of eyewitness testimony. Through promoting interdisciplinary collaboration, researchers can get vital insights into the cognitive mechanisms that underlie eyewitness memory. Simultaneously, practitioners and policymakers can formulate methods for implementing these discoveries in real-world contexts. By adopting this cooperative method, we can effectively connect study and practical application, so guaranteeing that endeavors to enhance the dependability of eyewitness testimony are firmly based on scientific data.<sup>47</sup>

To enhance the dependability of eyewitness testimony, a comprehensive strategy is necessary. This strategy should include the implementation of standardized lineup procedures, the utilization of cognitive interview techniques, the establishment of

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<sup>46</sup> Supra Note 43

<sup>47</sup> Supra note 2

safeguards against suggestive questioning and memory contamination, the execution of public awareness campaigns, and the promotion of interdisciplinary collaboration. To improve the accuracy of eyewitness identifications and minimize the occurrence of false convictions in criminal cases, policymakers and legal practitioners should adopt these best practices and guidelines.

### **5.3 Lineup procedures, interview techniques, and eyewitness identification reforms**

In India, lineup procedures involve the presentation of a group of individuals, which includes the suspect and numerous fillers, before an eyewitness for identification. The process of organizing a lineup is a crucial component of criminal investigations, especially when eyewitness testimony is used as evidence. The purpose of lineup processes is to enable the eyewitness to precisely identify the perpetrator of a crime, therefore assisting in the investigation and legal action against criminal offenses. In India, there is no particular legislation governing lineup procedures. However, these procedures are guided by the principles of fairness and due process as defined in the Indian Evidence Act of 1872 and established legal precedents. Nevertheless, the absence of defined protocols for conducting lineup identifications in India gives rise to apprehensions regarding suggestive methods and the possibility of erroneous identifications.

In India, lineup procedures usually entail the display of a lineup comprising the suspect and a number of others who bear a resemblance to the suspect, referred to as fillers or foils. The lineup can be conducted either in person, with the eyewitness physically observing the lineup members, or through the use of images or recordings. Occasionally, lineup methods may involve a live lineup, where the eyewitness directly witnesses participants in person. Optimally, the methods for arranging a lineup should be carried out in a way that reduces suggestive influences and enhances the dependability of eyewitness identifications. This involves ensuring that the individuals used as fillers closely resemble the suspect, presenting the lineup members one after another instead of all at once, and employing double-blind administration where the lineup administrator is uninformed of the suspect's identity. In actual implementation,

lineup methods in India have frequently faced criticism because to their absence of uniformity and vulnerability to suggestive practices. Instances have occurred where eyewitnesses have been swayed by leading questions or suggestive gestures from law enforcement authorities, resulting in erroneous identifications and unjust convictions. In response to these issues, there have been demands for reforms to the lineup procedures in India, which involve implementing standardized protocols that are based on the most effective methods and empirical research. The objective of these improvements is to augment the equity and dependability of lineup identifications, consequently enhancing the caliber of eyewitness testimony and diminishing the likelihood of wrongful convictions in the criminal justice system.

The objective of interview tactics is to get precise and dependable information from eyewitnesses while reducing the possibility of suggestibility, coercion, or memory contamination. In India, there is currently no universally accepted system for conducting eyewitness interviews. However, law enforcement organizations are supposed to follow specific best practices and principles to maintain the integrity of the investigative process. An essential element of interview strategies is the utilization of open-ended questions instead of leading or suggestive questions. Open-ended questions enable eyewitnesses to offer comprehensive and impromptu answers derived from their personal memory of events, free from the interviewer's prejudices or presumptions. However, leading questions might unintentionally imply specific answers to the witness and may lead to testimony that is not truthful or is distorted.

Interviewers are advised to establish a nurturing and non-intimidating atmosphere for eyewitnesses, which can alleviate stress and enhance the precision of information retrieval. Establishing a positive relationship with the witness and displaying compassion and comprehension can promote a sense of ease for the witness, thereby encouraging them to openly communicate their experiences and views.

Another crucial part of interview tactics is the prevention of suggestive or deceptive approaches that may taint the witness's recall. Interviewers must avoid giving feedback or offering any information that may potentially impact the witness's memory of the

events. Instead, their attention should be directed towards extracting impartial and factual testimony from the witness.

Furthermore, it is imperative for interviewers to undergo training in order to identify and tackle variables that may impact the dependability of eyewitness evidence, such as stress, trauma, or memory deterioration. Methods such as cognitive interviewing, which methodically examine the witness's memory using different retrieval cues and tactics, can improve the precision and comprehensiveness of eyewitness evidence. In India, interview procedures for eyewitnesses prioritize impartiality, objectivity, and respect for the witness's rights. Law enforcement agencies can enhance the reliability and credibility of eyewitness testimony in criminal investigations and trials by following best practices and ethical rules during interviews.

**Reforms Recommended are:**

It is imperative to improve the fairness and dependability of the criminal justice system in India by making changes to lineup protocols, interview techniques, and eyewitness identification practices. Various improvements can be suggested to rectify the deficiencies and weaknesses detected in the existing practices:

- i. **Proposal for Standardization of Lineup Procedures:** Implement uniform protocols for conducting lineup identifications in India, delineating precise standards for the selection of lineup participants, the presentation of lineups (in live, photographic, or video format), and the administration of lineups to eyewitnesses. This would aid in reducing suggestive influences and enhancing the precision of identifications.
- ii. **Require the implementation of double-blind administration during lineup procedures,** ensuring that both the lineup administrator and the eyewitness are unaware of the suspect's identity. This measure serves to mitigate the impact of inadvertent signals or prejudices on the witness's choice and guarantees the integrity of the identification procedure.

- iii. Offer extensive training to law enforcement professionals engaged in the execution of lineup procedures and the interrogation of eyewitnesses. The training should prioritize teaching methods to reduce suggestibility, identifying factors that can influence eyewitness testimony (such as stress or trauma), and conducting interviews in a just and unbiased manner.
- iv. Implementing Cognitive Interviewing: Propose the use of cognitive interviewing techniques as a customary procedure for interviewing eyewitnesses in India. Cognitive interviewing is a methodical process of questioning the witness's memory by employing different retrieval cues and tactics to improve the precision and comprehensiveness of their evidence.
- v. Establish systems for oversight and accountability to monitor and evaluate the application of lineup procedures and interrogation techniques by law enforcement authorities. This may encompass routine audits, autonomous evaluations, and feedback mechanisms to guarantee adherence to defined protocols and standards.
- vi. Public awareness and education campaigns: Implement public awareness campaigns to educate the general public, legal experts, and law enforcement officials regarding the limitations of eyewitness testimony and the significance of enacting reforms to enhance its trustworthiness. Promoting knowledge regarding the variables that can impact eyewitness identification and emphasizing the importance of impartial and equitable protocols can contribute to building confidence in the criminal justice system.

Through the implementation of these changes, India has the potential to enhance the integrity of lineup procedures, interview techniques, and eyewitness identification practices. This will ultimately lead to a decrease in the likelihood of false convictions and ensure that justice is administered in a fair and unbiased manner.

#### **5.4 Analysis of the role of education and training for legal professionals and law enforcement personnel**

Education and training play a pivotal role in enhancing the effectiveness and reliability of legal professionals and law enforcement personnel in handling eyewitness testimony within the criminal justice system. Firstly, education provides legal professionals, including judges, prosecutors, and defense attorneys, with a solid understanding of the complexities surrounding eyewitness testimony. Through coursework and specialized training programs, legal professionals gain insights into the factors that can influence eyewitness memory and perception, such as stress, bias, and suggestive questioning techniques. This knowledge equips them with the critical thinking skills necessary to assess the reliability of eyewitness evidence and make informed decisions during criminal proceedings.<sup>48</sup>

Similarly, law enforcement personnel receive specialized training on eyewitness identification procedures and investigative techniques to ensure the accuracy and integrity of eyewitness testimony. Training programs for law enforcement officers emphasize the importance of conducting unbiased and rigorous eyewitness identification procedures, minimizing suggestive influences, and documenting identification processes accurately. By providing law enforcement personnel with the necessary knowledge and skills, education and training empower them to conduct thorough and reliable investigations that uphold the principles of justice and fairness.

Moreover, ongoing education and training initiatives serve to keep legal professionals and law enforcement personnel abreast of the latest developments and best practices in handling eyewitness testimony. As research on eyewitness identification evolves, continuing education programs provide opportunities for professionals to update their knowledge and skills, learn about new techniques and technologies, and exchange insights with colleagues and experts in the field. This continuous learning process ensures that legal professionals and law enforcement personnel remain equipped to address emerging challenges and uphold the highest standards of professionalism and competence in their respective roles.

## **5.5 Evaluation of potential future directions for research and practice in the field of eyewitness testimony**

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<sup>48</sup> Supra note 1

everal key areas emerge that warrant further exploration and development. Firstly, there is a need for continued research into the effectiveness of innovative identification procedures and technologies in improving the reliability and accuracy of eyewitness evidence. Studies focusing on the implementation and impact of virtual reality simulations, advanced lineup methods, and eye-tracking technology could provide valuable insights into promising approaches for enhancing eyewitness identification practices. Secondly, future research should delve into the intersection of eyewitness testimony with emerging fields such as cognitive psychology, neuroscience, and artificial intelligence. By integrating insights from these disciplines, researchers can gain a deeper understanding of the cognitive processes underlying eyewitness memory and perception, as well as develop novel tools and techniques for assessing and analyzing eyewitness testimony. This interdisciplinary approach has the potential to revolutionize our understanding of eyewitness evidence and inform the development of evidence-based practices within the legal system.

Additionally, there is a need for research focusing on the impact of socio-cultural factors on eyewitness identification accuracy. Cross-cultural studies examining how cultural norms, beliefs, and experiences influence eyewitness memory and perception could provide valuable insights into the complexities of eyewitness testimony in diverse socio-cultural contexts. By incorporating a cultural lens into research and practice, practitioners can develop culturally sensitive approaches to handling eyewitness evidence that account for the unique influences of culture on memory and perception.

Furthermore, future research should explore the efficacy of educational and training interventions in enhancing the reliability and accuracy of eyewitness testimony among legal professionals and law enforcement personnel. Studies evaluating the effectiveness of specialized training programs, simulation-based learning experiences, and continuing education initiatives could provide valuable insights into effective strategies for equipping professionals with the knowledge and skills necessary to navigate the complexities of eyewitness evidence effectively.

Finally, there is a need for research focusing on the ethical and legal implications of emerging technologies and practices in the field of eyewitness testimony. As advancements in technology continue to shape the landscape of eyewitness



identification, researchers must critically examine the ethical considerations surrounding the use of technologies such as facial recognition software, biometric data analysis, and predictive modeling in eyewitness identification procedures. By addressing these ethical and legal concerns proactively, researchers and practitioners can ensure that advancements in the field of eyewitness testimony are aligned with principles of fairness, transparency, and respect for individual rights.

## **5.6 Concluding Remarks**

In conclusion, strategies for enhancing the reliability of eyewitness testimony are multifaceted and require a comprehensive approach involving standardized lineup procedures, improved interview techniques, ongoing education and training for legal professionals and law enforcement personnel, and continued research into innovative practices and emerging technologies.

Moving forward, it is imperative that policymakers, legal practitioners, researchers, and law enforcement agencies collaborate to address the challenges associated with eyewitness testimony effectively. This collaboration should prioritize the development and implementation of evidence-based practices, educational initiatives, and reforms aimed at enhancing the reliability and credibility of eyewitness evidence within the criminal justice system. By fostering interdisciplinary collaboration and remaining vigilant in our efforts to advance our understanding of eyewitness testimony, we can work towards building a more equitable and trustworthy legal system that upholds the principles of justice for all. In essence, the quest for enhancing the reliability of eyewitness testimony is an ongoing endeavor that requires continual evaluation, adaptation, and innovation. By remaining committed to this goal and embracing the latest advancements in research and practice, we can strive towards a future where eyewitness testimony serves as a more dependable and just form of evidence in criminal proceedings.

## **CHAPTER 6:**

### **SCIENCE AND ROLE OF EYEWITNESS**

#### **6.1 Introduction**

Scientific research on eyewitness examination has been a subject of significant study due to the complexities and potential inaccuracies associated with human memory. Studies have shown that eyewitness performance differs substantially from what the average person would predict, highlighting the need for a deeper understanding of eyewitness testimony. Researchers have been investigating eyewitness testimony for over a century, focusing on the vulnerabilities of human memory and the critical role it plays in criminal investigations. The frailties of memory can lead to errors in eyewitness identification, emphasizing the importance of implementing solutions to mitigate these errors. Despite extensive research and recommendations emerging from studies on eyewitness identification, there are challenges in implementing these recommendations in practice. Understanding why these recommendations are not consistently applied is crucial for improving the reliability of eyewitness evidence in legal proceedings. Studies have also explored the impact of pre-event instructions on eyewitness identification, often involving simulated crimes to test memory using lineups. This research contributes to understanding how instructions given before an event can influence subsequent eyewitness identification processes. Eyewitnesses play a vital role in uncovering the truth about crimes, with their evidence being critical in identifying perpetrators and establishing facts in criminal cases. Enhancing investigative practices based on scientific research findings is essential for improving the accuracy and reliability of eyewitness evidence within the criminal justice system.

#### **6.2 Scientific Research on eye witnessing**

Scientific research on visual perception and memory has significantly influenced the handling of eyewitness evidence in the legal system by highlighting the fallibility of human memory and perception and providing insights into factors that can impact the

accuracy of eyewitness testimony. Here are some key ways in which scientific research has influenced the legal system:

**Identification Procedures:** Scientific research has led to the development of best practices for identification procedures used by law enforcement agencies. Studies have shown that traditional lineup methods, such as simultaneous photo arrays, can lead to higher rates of misidentifications due to factors like lineup fairness and biasing cues. As a result, research-informed recommendations have been made to improve lineup procedures, such as using sequential lineups and double-blind administration to reduce the risk of suggestive influences.

**Expert Testimony:** Scientific research has supported the admissibility of expert testimony on eyewitness perception and memory in court proceedings. Experts in the field of psychology can educate judges and juries about the limitations of human memory, the effects of stress on eyewitness accuracy, and the potential for memory distortion. By incorporating expert testimony, courts can make more informed decisions about the reliability of eyewitness evidence.

**Jury Instructions:** Research findings on eyewitness memory have prompted the development of new jury instructions that take into account the factors influencing eyewitness identification. State courts have adopted updated instructions that educate jurors about the fallibility of memory, the impact of stress on perception, and the importance of considering lineup fairness when evaluating eyewitness testimony. These instructions aim to help jurors make more informed decisions based on the scientific understanding of memory processes .

**Pretrial Reliability Hearings:** Some courts have implemented pretrial reliability hearings to assess the accuracy and reliability of eyewitness identifications before they are presented to the jury. These hearings allow judges to evaluate the circumstances surrounding the identification, the lineup procedures used, and any potential biases that may have influenced the identification. By incorporating scientific research into these hearings, courts can better assess the credibility of eyewitness evidence. Overall, scientific research on visual perception and memory has played a crucial role in shaping the legal system's approach to handling eyewitness evidence. By integrating empirical findings into legal practices, courts can work towards improving the reliability and accuracy of eyewitness testimony, ultimately enhancing the fairness of criminal

proceedings. Policing agencies have adapted their identification practices in response to scientific research on eyewitness evidence to enhance the reliability and accuracy of identifications. Here are some ways in which policing agencies have incorporated research findings into their practices:

**Implementation of Best Practices:** Policing agencies have implemented best practices recommended by scientific research to improve identification procedures. This includes adopting sequential lineup methods over simultaneous lineups, as research has shown that sequential lineups can reduce the likelihood of false identifications by minimizing witness reliance on relative judgments and reducing the influence of lineup composition.

**Training Programs:** Policing agencies have developed training programs for law enforcement officers to educate them on the factors that can affect eyewitness identification accuracy. These programs incorporate scientific research findings on memory distortion, lineup fairness, and the impact of stress on witness perception. By providing officers with training based on empirical evidence, agencies aim to improve the quality of identifications made during investigations.

**Use of Model Policies:** Professional policing organizations, such as the International Association of Chiefs of Police (IACP) and the Major Cities Chiefs Association, have developed model policies on eyewitness identifications. These policies are informed by scientific research and provide guidelines for law enforcement agencies to follow when conducting identification procedures. By promoting the adoption of evidence-based practices through model policies, policing agencies seek to enhance the accuracy and reliability of eyewitness identifications.

**Collaboration with Researchers:** Policing agencies have collaborated with researchers in the field of psychology and criminology to stay informed about the latest scientific developments in eyewitness identification. By working closely with researchers, agencies can access cutting-edge research findings and incorporate them into their practices. This collaboration helps ensure that policing agencies are using evidence-based approaches to handle eyewitness evidence .

**Continuous Improvement:** Policing agencies have demonstrated a commitment to continuous improvement in their identification practices based on evolving scientific research. By staying abreast of new findings and adapting their procedures accordingly, agencies can enhance the quality and reliability of eyewitness identifications over time. This ongoing effort to incorporate research-informed practices reflects a dedication to upholding the integrity of the criminal justice system .

In summary, policing agencies have responded to scientific research on eyewitness evidence by implementing best practices, providing training to officers, utilizing model policies, collaborating with researchers, and striving for continuous improvement in their identification procedures. By integrating empirical findings into their practices, policing agencies aim to enhance the accuracy and fairness of eyewitness identifications in criminal investigations.

## **6.3 Conclusion**

Eyewitness testimony holds immense significance within the framework of the criminal justice system in India, serving as a primary source of evidence derived from personal observation. However, it is imperative to acknowledge the inherent fallibility of such testimony, as it can be susceptible to various internal and external influences, potentially leading to inaccuracies and miscarriages of justice. Factors such as stress, bias, contextual information, and confidence levels can significantly impact the accuracy of eyewitness identification, highlighting the need for caution in relying solely on this type of evidence.

In response to the challenges posed by the reliability of eyewitness testimony, efforts have been made globally to integrate scientific principles and practices into the legal system. Scientific research on visual perception and memory has played a pivotal role in informing best practices for handling eyewitness evidence, ranging from identification procedures to jury instructions and pretrial reliability hearings. By incorporating empirical findings into legal practices, courts can make more informed

decisions about the credibility and admissibility of eyewitness testimony, ultimately enhancing the fairness and reliability of criminal proceedings.

Policing agencies have also responded to scientific research on eyewitness evidence by adapting their identification practices and implementing evidence-based approaches. This includes the adoption of sequential lineup methods, development of training programs for law enforcement officers, utilization of model policies, collaboration with researchers, and a commitment to continuous improvement. By staying abreast of the latest research findings and integrating them into their procedures, policing agencies aim to enhance the accuracy and reliability of eyewitness identifications in criminal investigations.

Overall, the integration of scientific research into the legal and law enforcement practices surrounding eyewitness evidence reflects a concerted effort to address the challenges and complexities associated with its reliability. By working collaboratively across disciplines and embracing evidence-based approaches, stakeholders within the criminal justice system can strive towards a more just and equitable adjudication process, ensuring that the rights of both the accused and the victims are upheld and that the truth is pursued diligently and fairly.

# **CHAPTER 7:**

## **THE ROLE OF SOCIETY AND WITNESS PROTECTION**

### **IN INDIA**

#### **7.1 Introduction**

The police play a crucial role in the protection of witnesses. The police are required to perform a multitude of responsibilities in order to prevent crime. The role of witnesses in crime investigation and prevention is crucial, and the responsibility of the police in ensuring the effectiveness of the witness protection program is as vital in achieving the intended outcomes. Witness security measures can be classified into three categories: (i) police protection and the implementation of steps to strengthen the target's security and operational procedures, (ii) judicial and procedural measures, and (iii) covert witness protection programs. The police play a crucial role in all of these categories. Comprehensive training should be given to criminal justice personnel regarding protective measures and related procedures. This section will outline the responsibilities of police officers based on their ranks and positions in preventing crime, as well as their role in safeguarding witnesses. When examining the role and functions of the Indian Police, it is essential to consider the fundamental statute. The Police Act, Commission Reports, and state legislations will undergo a thorough analysis.

This section also addresses the societal aspect of witness protection. The researcher will now elucidate the significance and necessity of society in the prevention of crime and the enforcement of law. Furthermore, the researcher will expound upon the particular role that various components of society play in the witness protection program.

#### **7.2 The role and function of the police in India**

The police play a crucial role in preventing and controlling crime, maintaining public order, and fulfilling their obligations and responsibilities. However, it is important to consider these functions within the broader context of general societal needs. The success of the criminal justice system as a whole is influenced by the role of the police, particularly in the accusatorial form of the system. Unlike the inquisitorial system, which has been used in Europe since the thirteenth century and requires the judge to actively investigate and determine the truth by questioning all relevant individuals, including the accused, the accusatorial system positions the judge as a neutral arbiter between two opposing parties. The judge will base his decision solely on the issues and evidence presented to him. Therefore, it is primarily the obligation of the police to provide the court with unaltered proof and reliable witnesses.<sup>49</sup>

The function of the police has been evolving since the establishment of the police system in India. In order to comprehend the current duty of the police, one might refer to the provisions outlined in the Police Act of 1861, the Model Police Act, and the National Police Commission Reports. The responsibilities of the police, as outlined in the Police Act of 1861, include:

- i. Comply with and carry out all commands and legal documents legitimately issued by any authorized entity;
- ii. Gather and disseminate information that impacts public tranquility;
- iii. Ensure the prevention of criminal acts and disturbances to public order;
- iv. Identify and apprehend criminals and ensure they are held accountable through the legal system;

The individual should apprehend all individuals whom they have legal authority to apprehend and for whom there is sufficient evidence for their apprehension. Nevertheless, the Model Police Act proposed by the National Commission of Police in its Eighth Report surpasses this Act by outlining the following responsibilities for the police in response to current changes and advancements.

Every police officer is obligated to:

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<sup>49</sup> Karen Kramer, Witness Protection as a Key Tool in Addressing Serious and Organized Crime (March 12, 2014), [http://www.unafei.or.jp/english/pdf/PDF\\_GG4\\_Seminar/Fourth\\_GGSeminar\\_P3-19.pdf](http://www.unafei.or.jp/english/pdf/PDF_GG4_Seminar/Fourth_GGSeminar_P3-19.pdf)



1. Facilitate and maintain public order;

According to the Constitution of India, the police is within the jurisdiction of the state. However, the state laws are mostly derived from the Police Act of 1861.

Section 43 of the Model Police Act of 2006

2. Conduct investigations into crimes, and where necessary, apprehend the perpetrators and participate in future judicial actions related to the crimes.

3. Identify circumstances and scenarios that are prone to leading to the occurrence of criminal acts;

4. Minimize the chances of criminal activities by implementing preventative patrol and other recommended police strategies;

5. Collaborate and assist other pertinent agencies in carrying out the specified steps to prevent crimes.

6. Assist persons who are at risk of bodily harm;

7. Establish and sustain a sense of security among the community;

8. Enable the organized and efficient transportation of individuals and automobiles;

9. mediate and settle disputes and foster harmony;

10. Offer essential services and provide assistance to individuals in dire circumstances;

11. Gather information pertaining to issues impacting public order and general criminal activities, encompassing social and economic transgressions, national unity, and security.

12. Carry out any additional responsibilities mandated by current legislation.

Additionally, the model law outlines the responsibilities of Police Officers towards vulnerable groups, individuals living in poverty, and the general public

Every police officer is obligated to-

I. The individual is required to officially record all recognizable offenses that are reported to them either in person, by mail, or via their own knowledge. They must

promptly acknowledge the registration of these offenses when necessary and proceed with the appropriate inquiry as mandated by the law.

ii. To collaborate and assist other agencies in preventing all types of offenses and the deliberate destruction of public property by acts of violence, fire, and accidents;

iii. To avoid hazardous behavior in public areas, it is important to discourage activities such as overcrowding boats during river crossings or allowing spirited young individuals to drive in a risky and reckless manner.

When apprehending an individual, it is important to guarantee that their rights and privileges are not violated. This includes allowing an arrested person to inform a chosen individual of their imprisonment.

xi. Ensure that every person in custody is provided with legally permissible sustenance and shelter. Additionally, inform impoverished individuals in custody about the legal aid schemes being implemented in the State and notify the relevant authority to give such assistance.

xii. Offer comprehensive support to individuals affected by road accidents, specifically by ensuring immediate medical attention is provided without delay for administrative procedures.

xiii. Provide assistance to accident victims or their beneficiaries, if applicable, by furnishing them with the necessary information and documentation to expedite their compensation claims. Additionally, advise victims of road accidents about their entitlements and advantages.

xiv. Demonstrate via personal behavior that it is in the collective interest of society to comply with the prevailing laws.

### **7.3 Roles and functions**

1. The primary and fundamental responsibility of the police is to ensure the maintenance of public order, which includes upholding the law, preserving peace, and ensuring the security of the general population.

2. Classification of criminal activities

3. Implementation of Social Legislation
4. Gathering Intelligence and constructing an information system
5. Therapy
6. Functions that are oriented towards providing services.

The program consists of 3 stages where the role of the police becomes crucial in witness protection.

### **7.3.1 Initial Phase**

The Police's involvement in witness protection begins when a witness submits an application for witness protection. This can happen at any stage of a criminal trial, such as when filing a First Information Report (FIR). It is the responsibility of the Police Officer to investigate and determine if witness protection is necessary. The Police Officer is also obligated to inform the complainant or potential witness about the witness protection program, including the procedures and rights available to witnesses.<sup>50</sup>

The presence of police is vital at this stage as it guarantees the safety and security of witnesses during the application process. It also convinces them of the significance and relevance of their evidence in the specific case and the overall administration of criminal justice. This, in turn, ensures the effectiveness of the trial and the conviction of the actual offender.

### **7.3.2 Throughout the investigation process**

The investigative phase in criminal administration is a crucial stage where the collection and organization of evidence take place. Investigation primarily involves determining the facts and circumstances of the case. It encompasses all the efforts made by a police officer to gather evidence, such as visiting the crime scene and verifying facts. In three specific situations, the designated court has the authority to provide the protection of witness identity. These situations include when the witness applies for protection, when

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<sup>50</sup> The Process of Criminal Trial in India, ARTICLE2.ORG (March 12, 2014), <http://www.article2.org/mainfile.php/0702/313/>.

the prosecution applies for protection, or when the court itself decides to provide protection. This was established in the case of *Kartar Singh v. State of Punjab*<sup>51</sup>.

The investigation process involves several key steps: identifying the circumstances surrounding the case, apprehending and detaining the suspected offender, gathering evidence related to the offense through interviews and written statements from various individuals, as well as conducting searches and seizures of relevant items. The goal is to determine whether there is enough evidence to bring the accused before a magistrate for trial. Once this determination is made, the necessary actions are taken to file the charge-sheet. The investigation concludes with a police report being submitted to the magistrate. At this point, there is a potential for tampering with the evidence and key witnesses in the case. Therefore, the police officer responsible for witness protection and the investigating officer are tasked with ensuring that the witnesses and evidence are presented to the court without any tampering and in a secure manner.<sup>52</sup>

#### **7.3.4 During the trial**

The next pivotal phase in the Criminal procedure is the trial, which serves as the judicial determination of an individual's culpability or innocence. According to the CrPC, criminal trials are classified into three divisions, each with distinct procedures known as warrant, summons, and summary trials. The trial encompasses several customary stages, outlined as follows:

A. **FRAMING OF CHARGE** - This stage marks the commencement of a trial. The judge's duty at this point is to carefully examine and evaluate the evidence in order to determine whether a prima facie case against the accused has been established. If the material presented to the court reveals serious suspicion against the accused that has not been adequately explained, the court proceeds to frame the charge and proceed with the trial. This material includes the police report prepared by the Investigation Officer. If the police have effectively provided witness protection, the report will assist the court in formulating appropriate charges against the accused. Conversely, after reviewing the case record and submitted documents, and after hearing the accused and the prosecution, if the judge concludes that there is insufficient basis for further

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<sup>51</sup> 1994 (3) SCC 569.

<sup>52</sup> Supra note 50

proceedings, the judge will discharge the accused.<sup>53</sup> The accused is charged and the reasons for the accusation are documented. It is possible that the accused may be acquitted owing to insufficient evidence or witnesses, which may be a result of inadequate or non-existent witness protection provided by the police. The phrase "not sufficient ground for proceeding against the accused" refers to the judge's obligation to carefully consider whether the prosecution has presented enough evidence to warrant a trial. This can be better understood by recognizing that while a strong suspicion alone is not enough to prove guilt during the trial, it may still be sufficient for the court to formally charge the accused person. The accused is informed and given a clear explanation of the charge. If the accused pleads guilty, the judge will record the plea and, at their discretion, may convict them. If the accused pleads not guilty and chooses to go to trial, the trial commences. The trial begins after the charge has been formulated, and the stage before this is known as the inquiry.<sup>54</sup>

Following the inquiry, the charge is prepared, and once it is formulated, the trial begins. A charge is essentially the formal accusation against a person who is facing trial for a specific offense. It outlines the alleged offense that was committed. Therefore, the role of the police is crucial here, as the framing of charges is based on the comprehensive and accurate report prepared by them.

b. **RECORDING OF PROSECUTION EVIDENCE** - Once the charge has been formally established, the prosecution is required to present its witnesses in court. The witnesses are required to provide their statements under oath, which is known as examination-in-chief. The defense is then given the opportunity to cross-examine all the witnesses presented by the prosecution. At this stage, the witnesses may require protection from the police, and there may be a need for the proceedings to be conducted in camera, meaning in private. The police are responsible for facilitating this. Section 309 of the Cr.P.C states that the proceedings should be conducted as quickly as possible, especially when it comes to the examination of witnesses.

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<sup>53</sup> Supra note 1

<sup>54</sup> MANUAL ON HUMAN RIGHTS EDUCATION WITH YOUNG PEOPLE, COUNCIL OF EUROPE, Activism and the Role of NGOs at 305-309.

Once the witnesses have started, their examination will continue daily until all the witnesses present have been questioned.

c. **ACCUSED'S STATEMENT** - The court has the authority to question the accused at any point during the investigation or trial in order to obtain an explanation for any incriminating evidence presented. However, it is mandatory for the court to question the accused after reviewing the prosecution's evidence if it implicates the accused. This questioning does not require the accused to take an oath and occurs before the accused presents a defense. The purpose of this questioning is to provide the accused with a fair opportunity to clarify any incriminating facts and circumstances in the case. The accused is also considered a competent witness. Therefore, it is important for the police to conduct a thorough investigation to determine the authenticity of such incriminating evidence.

d. **DEFENCE EVIDENCE** - After considering the evidence presented by the prosecution, examining the accused, and hearing arguments from both the prosecution and defence, the judge must issue an order of acquittal if they are satisfied that there is no evidence to prove that the accused committed the claimed offence. However, if the accused is not acquitted due to lack of evidence, they must present a defense and provide evidence to support it. The accused has the option to call witnesses who are willing to testify in favor of the defense. According to the law, the accused themselves can also testify as a competent witness. The accused can also request the court to issue a summons to compel the attendance of any witness or the production of any document or object. The witnesses presented by the accused are then subjected to cross-examination by the prosecution.

The accused individual has the right to offer evidence if they choose to do so after their statement has been recorded. The prosecution has the opportunity to cross-examine the witnesses presented by the accused. It is usual for most accused individuals to not present evidence for their defense.

The legal system operates under the principle that the prosecution bears the burden of proof, and in a criminal trial, the level of proof required is beyond a reasonable doubt. The police have a significant responsibility in ensuring the well-being of the witness during this procedure and, if necessary, in preserving the witness's anonymity without impeding the legal proceedings.

e. **FINAL ARGUMENTS** - This stage marks the conclusion of the trial. According to the requirements of the Cr.P.C, once the examination of the defense witnesses, if any, is over, the prosecutor will summarize the prosecution's case, and the accused has the right to respond.

f. **JUDGMENT** - The judge delivers their decision in the trial following the completion of arguments presented by the prosecutor and defense. The police should guarantee the safety of witnesses throughout the entire trial, and if necessary, extend it even after the decision in exceptional circumstances. The Supreme Court's position on this matter is that protection should only be provided until the conclusion of the case.

#### **7.3.4 After the trial**

The post-trial period refers to the time between the final argument and the judgment. While the Supreme Court maintains that protection can only be guaranteed until the judgment is made, there may be exceptional cases where protection is necessary even after the trial. Any form of intimidation towards witnesses after the judgment can disrupt the peace and harmony in society. In such cases, the police play a crucial role in ensuring and upholding law and order.

### **7.4 The Impact of Society on Criminal Investigation and the Administration of Justice**

The influence of societal norms and accepted morality on the formation of law and legal systems is unquestionable. There will always exist an unavoidable disparity between the standards of formal. The study of law encompasses both the formal legal material and the actual behavior observed in society. To truly understand the living law of a society, one must look beyond the formal legal material and examine the societal context. Therefore, society plays a crucial role in ensuring the just enforcement of any rule.<sup>55</sup> The fundamental reality of society is the interaction and resulting interdependence of individuals. People share common needs that require collective effort, as well as differing needs that necessitate mutual adjustment and accommodation. In today's world, no one can live independently from civilization without relying on a vast network of services provided by others. The provision of

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<sup>55</sup> Supra note 54

water, food, housing, clothing, recreation, entertainment, and more is entirely reliant on fellow human beings. This social interdependence is not a mere speculation, but an unavoidable truth of human existence. Therefore, all organizations should prioritize facilitating smoother and more comprehensive cooperation among individuals. This cooperation is particularly crucial in the administration of criminal justice and the investigation of crimes. Without such cooperation, the legal system would be severely limited. Thus, society and its dynamics are integral components of the legal system and cannot be separated from it.<sup>56</sup>

In contemporary society, there is a complex array of values that exert varying degrees of pressure and have different levels of relevance. It is important to understand the influence of groups, roles, and institutions in this context. Society is comprised of individuals, groups, and institutions, all of which have an impact on both the content and process of laws, thereby affecting the administration of criminal justice. There are cases where society plays a crucial role in crime investigation, such as by cooperating with the system and actively contributing to the efficiency of criminal justice delivery.<sup>57</sup>

An area of legal interest lies in the close relationship between group dynamics and values and moral influences. The values of a society are intricately linked to influential groups. The goals and principles of such a group are initially evaluated by its members, but the level of pressure exerted to achieve these goals depends on the group's strength. The more powerful the group, the greater the likelihood of its success.

## **7.5 Role in crime prevention, crime investigation, and raising awareness, among other things.**

Over time, the meaning of the acronym will gradually gain influence outside its original context. Consequently, these influential groups have a long-lasting impact on the functioning of the criminal justice system. Over time, as the aims and ideals of a group gain social acceptance, they no longer rely on power and develop their own existence. For example, the concept of giving and receiving dowry is considered a wrongdoing.

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<sup>56</sup> Supra note 50

<sup>57</sup> UNIVERSITY OF MINNESOTA, HUMAN RIGHTS LIBRARY,- (March 14, 2014), <http://www1.umn.edu/humanrts/svaw/trafficking/explore/5protection.html>



Initially, it required the assistance of legal institutions. However, as time passed, the objectives were largely accomplished, and now the idea has emancipated itself from the law, as it has become a widely accepted societal norm and no longer requires legal support. The pressure for an individual to conform to a group arises from the awareness that others also conform, leading to a sense of obligation that the individual can either embrace or reject. Those who embrace it further believe that some level of discipline is necessary to maintain the group, while even those who reject it feel that non-conformity is an act of rebellion. This pressure is significant at every stage of the criminal justice system's administration.<sup>58</sup>

## **7.6 The role of society in witness protection is significant.**

When a person consistently behaves in a certain way towards others, their behavior becomes institutionalized and can be referred to as a "role". Roles develop as responses to problems that arise during interactions between individuals and groups, and they have been described as such.

The concept of social roles refers to the recognized and established norms that govern the interactions between individuals and groups. These norms exert influence on behavior and provide guidance on how to act. A role can encompass multiple relationships and may overlap with other roles. Both social roles and social strata contain inherent values, making them more than just factual circumstances. Therefore, it is important to acknowledge that ideas, not just human beings, also play a significant role in shaping social dynamics.<sup>59</sup>

Examining the societal impact on the criminal justice system provides valuable knowledge for implementing a comparable approach to witness protection in India. In general, the function of society in relation to witness protection in India can be outlined as follows:

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<sup>58</sup> Supra note 3

<sup>59</sup> Ibid

1. Collaboration in the implementation of the witness protection program - As said earlier, the interconnectedness of society plays a crucial role in ensuring the effectiveness of judicial systems. Likewise, the successful execution of a witness protection program relies heavily on the full cooperation and support of all parties involved. Society manifests itself in diverse ways, such as individuals engaging in volunteering activities to support the investigation of crime scenes and providing shelter for witnesses under protection.

2. Offering proactive assistance - The influence exerted by a collective in shaping societal norms is crucial, and therefore, in a witness protection program, this collective pressure is necessary. This is because any newly established legal standard in society cannot be easily integrated into the system without the aid of this pressure.

3. Creating a 'role' – Institutionalizing the comprehensive witness protection programme in India would require audacity and conviction amongst all the stakeholders, and it only society which is receptive with sensitized individuals can effectively partake in such initiatives. Non – Governmental Organisations (NGOs) and their role in Rights Advocacy –The term non- governmental or, more accurately non-profit is normally used to cover the range of organisations which go on to make up the civil society. Such organisations are characterised, in general, by having as the purpose of their existence something other than financial profit. However, this leaves a huge multitude of reasons for existence and a wide variety of enterprises and activities. NGOs range from small pressure groups on, for example, specific environmental concerns or specific human rights violations, through educational charities, women's refuges, cultural associations, religious organisations, legal foundations, humanitarian assistance programmes – and the list could go on – all the way to the huge international organizations with hundreds or even thousands of branches or members in different parts of the world.<sup>60</sup>

NGOs play a key role in advocating for and safeguarding human rights. They accomplish this goal by carrying out the following responsibilities within society:

1. Addressing isolated instances of human rights infringements.

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<sup>60</sup> Supra note 50.

2. Providing immediate aid to individuals whose rights have been infringed upon.

Engaging in advocacy efforts to influence alterations to domestic or global legislation.

4. Assisting in the formulation of the content of such laws

5. Fostering awareness and reverence for human rights within the populace

NGOs play a crucial role not only in achieving tangible results and instilling optimism about the protection of human rights worldwide, but also as accessible tools for individuals. While managed by private individuals, NGOs derive strength from voluntary support within the community. This makes them highly significant for individuals seeking to contribute to the advancement of rights advocacy globally.

The NGOs can effectively contribute to the establishment of an efficient witness protection program in the following areas:

1. Gathering information from witnesses - Witnesses are more likely to feel at ease and be willing to share information in the informal environment of NGOs, as opposed to the formal setting of courts and legal forums. Different types of witnesses may necessitate different expertise in extracting information, which can be provided by NGOs at a lower cost and investment.

2. NGOs can play a crucial role in supporting the State Machinery to achieve the goals of a successful witness protection program. To ensure effective and ongoing victim assistance and protection, states should allocate adequate resources and provide training opportunities to relevant NGOs. Additionally, a well-functioning collaboration between NGOs and state authorities is essential for effective victim assistance and protection. Given that India is a developing nation, the government could consider seeking assistance from NGOs to fulfill these objectives.

3. NGOs in India have actively advocated for witness protection to be prioritized at the national level. Therefore, it is crucial that they are also involved in the actual implementation of this policy. The ability of NGOs to raise awareness about certain issues in the legislative process greatly strengthens their capacity to participate in the subsequent stages of decision-making.

4. NGOs can offer direct support to witnesses, such as legal advice, psychiatric counseling, safe housing, financial aid, and assistance with rehabilitation.

5. Disseminating legal knowledge - It is crucial to raise awareness about the current witness protection program in a country like India, where a significant portion of the population is illiterate and resides in rural areas. Non-governmental organizations (NGOs) can educate people about their rights under the witness protection program and promote citizen involvement in criminal proceedings to ensure justice is served. They can raise awareness about the program and empower potential witnesses to feel secure and unafraid when providing testimony against criminals and crimes in society.

## **7.7 Conclusion**

After analyzing the responsibilities of the police, society, and NGOs in witness protection, it is evident that all three elements are essential for the success of the witness protection program. Given the significant roles they play, we must take into consideration

The proposed changes to existing legislation in India aim to enable the fulfillment of the aforementioned duties. The specific revisions and amendments are as follows:

1. Amendment in Police Act - A pertinent section should be incorporated into the Police Act, mandating the police to provide protection to witnesses in accordance with the provisions of the witness protection program. This section could be designated as

The responsibilities of the police towards witnesses should be clearly outlined in three categories: obligations during the application stage, duties during the trial, and duties after the trial. Additionally, any other relevant duties should also be specified.

2. The procedural requirements under the relevant sections of the Cr.P.C. and Indian Evidence Act require amendment.

3. Modification of the police training approach – The introduction of the Witness Protection Program requires that police personnel receive specialized training to effectively carry out the program. They must be trained to exercise greater discretion in their actions and also develop human resource skills to handle and interact with sensitive and vulnerable witnesses.

It is necessary to adopt schemes such as Janamaithry Suraksha in all states, providing appropriate training to the relevant personnel, in order to effectively lower the crime rate.

Advocacy programs should be implemented to train the general public. It is crucial to conduct awareness campaigns at different levels to educate society about their role in witness protection programs. The public needs to be informed about the rights of witnesses and how to seek legal assistance if they have witnessed a crime. The government should organize training sessions for ordinary citizens to prepare them for situations involving criminal activities and to help the court in delivering justice.

## **CHAPTER 8:**

### **CONCLUSION AND SUGGESTIONS**

#### **8.1 Introduction**

The dissertation makes significant contributions to the understanding and handling of eyewitness testimony within the Indian legal system. It meticulously examines the pivotal role that eyewitness testimony plays in criminal proceedings, serving as crucial evidence derived from personal observation. However, the dissertation also highlights the inherent challenges associated with relying solely on eyewitness testimony, particularly due to its susceptibility to various internal and external influences such as stress, bias, contextual information, and confidence levels. Through a comprehensive review of scientific research on visual perception and memory, the dissertation elucidates how empirical findings have informed best practices for handling eyewitness evidence, ranging from identification procedures to expert testimony and jury instructions. Moreover, the dissertation sheds light on the responses of policing agencies to scientific research, demonstrating how law enforcement has adapted identification practices and implemented evidence-based approaches to enhance the reliability and accuracy of eyewitness identifications. Overall, the dissertation contributes to the enhancement of the criminal justice system by providing insights into evidence-based approaches for handling eyewitness evidence, thereby working towards improving the fairness and reliability of criminal investigations and proceedings.

#### **8.2 Reflection on the implications of the research for legal practice, policy, and society**

The research conducted in this dissertation has profound implications for legal practice, policy-making, and society as a whole. By shedding light on the complexities and challenges associated with eyewitness testimony, the research provides valuable insights that can inform reforms and improvements within the legal system.

From a legal practice standpoint, the findings of this research highlight the importance of adopting evidence-based approaches to handling eyewitness evidence. Legal practitioners, including judges, prosecutors, and defense attorneys, can benefit from understanding the factors that influence eyewitness testimony and the limitations of relying solely on such evidence. This understanding can inform case strategy, argumentation, and decision-making, ultimately contributing to more just outcomes in criminal proceedings.

Moreover, the research underscores the need for policy reforms aimed at enhancing the reliability and accuracy of eyewitness identification procedures. Policymakers can draw upon the findings of this research to implement measures such as the adoption of sequential lineup methods, the development of standardized training programs for law enforcement officers, and the establishment of guidelines for the admissibility of expert testimony on eyewitness perception and memory. By incorporating evidence-based practices into policy frameworks, policymakers can strengthen the integrity of the criminal justice system and safeguard against wrongful convictions.

On a societal level, the implications of this research extend to broader discussions surrounding justice, fairness, and public trust in the legal system. By addressing the challenges associated with eyewitness testimony, the research contributes to building public awareness and understanding of the complexities involved in criminal investigations and trials. This, in turn, can foster greater confidence in the legal system and promote public trust in the administration of justice.

Furthermore, the research highlights the importance of ongoing dialogue and collaboration between legal practitioners, policymakers, researchers, and community stakeholders. By engaging in interdisciplinary discussions and sharing knowledge and insights, stakeholders can work together to develop innovative solutions and reforms that address the challenges posed by eyewitness testimony and promote fairness and equity within the legal system.

In conclusion, the implications of this research for legal practice, policy-making, and society are far-reaching and significant. By informing reforms, improving practices, and fostering dialogue and collaboration, the research has the potential to contribute to

a more just, equitable, and trustworthy legal system that upholds the rights of all individuals.

### **8.3 Suggestions for future research endeavours in advancing our understanding of eyewitness testimony**

Future research endeavours in advancing our understanding of eyewitness testimony could explore several avenues to further enhance the reliability and accuracy of this type of evidence within the legal system. Here are some suggestions for future research:

- **Investigating the Impact of Technology:** Future research could explore how emerging technologies, such as virtual reality simulations or eye-tracking technology, can be utilized to improve eyewitness identification procedures. Studying the effectiveness of technology-enhanced lineup methods and the potential for reducing identification errors could provide valuable insights into innovative approaches for enhancing the reliability of eyewitness testimony.
- **Examining Cross-Cultural Differences:** Cross-cultural studies on eyewitness testimony could provide insights into how cultural factors influence memory and perception. By comparing eyewitness identification practices and outcomes across different cultural contexts, researchers can identify cultural-specific factors that may impact the accuracy of eyewitness testimony and inform culturally sensitive approaches to handling this evidence.
- **Exploring Cognitive Interview Techniques:** Cognitive interview techniques, such as the Enhanced Cognitive Interview (ECI), have shown promise in improving the accuracy of eyewitness testimony by facilitating the retrieval of detailed and accurate information from witnesses. Future research could further explore the effectiveness of cognitive interview techniques in real-world investigative settings and assess their impact on the reliability of eyewitness evidence.



- **Investigating the Role of Emotional Factors:** Emotions can significantly influence eyewitness memory and perception, yet their impact on the accuracy of eyewitness testimony is still not fully understood. Future research could examine how emotional factors, such as stress, anxiety, or arousal, affect eyewitness identification accuracy and explore strategies for mitigating the negative effects of emotions on memory and perception.
- **Studying Eyewitness Confidence and Accuracy:** There is a need for further research on the relationship between eyewitness confidence and identification accuracy. Future studies could investigate factors that influence eyewitness confidence, such as post-event feedback or lineup administration procedures, and assess their impact on the reliability of eyewitness testimony. Additionally, research could explore the effectiveness of confidence-accuracy calibration training in improving eyewitness identification accuracy.
- **Analyzing the Impact of Social Influences:** Social factors, such as co-witness influence or lineup composition, can impact eyewitness identification accuracy. Future research could investigate how social influences affect eyewitness memory and perception and explore strategies for reducing the influence of social factors on identification decisions. This could include examining the effectiveness of lineup composition manipulations or exploring the role of social dynamics in eyewitness identification procedures.

Overall, future research endeavors in advancing our understanding of eyewitness testimony should focus on exploring innovative approaches, leveraging emerging technologies, and addressing gaps in our knowledge to enhance the reliability and accuracy of this critical form of evidence within the legal system. By addressing these research priorities, scholars can contribute to the development of evidence-based practices that promote fairness, accuracy, and reliability in the adjudication of criminal cases.

#### **8.4 Final thoughts on the significance of addressing challenges associated with eyewitness testimony in criminal justice systems**

Addressing the challenges associated with eyewitness testimony in criminal justice systems is of paramount significance for several reasons. Firstly, eyewitness testimony often serves as a cornerstone of evidence in criminal trials, influencing judges and juries' decisions and shaping the outcomes of cases. Therefore, ensuring the reliability and accuracy of eyewitness testimony is essential for upholding the principles of justice and fairness within the legal system.

Secondly, wrongful convictions based on erroneous eyewitness identifications can have devastating consequences, not only for the individuals wrongfully convicted but also for society at large. Innocent individuals may lose their freedom, families may suffer emotional and financial hardships, and public trust in the criminal justice system may erode. By addressing the challenges associated with eyewitness testimony, we can help prevent miscarriages of justice and safeguard the rights of the accused. Moreover, enhancing the reliability of eyewitness testimony can contribute to improving the effectiveness and efficiency of criminal investigations. By adopting evidence-based practices for eyewitness identification procedures and incorporating scientific research findings into investigative techniques, law enforcement agencies can increase the likelihood of identifying and apprehending the true perpetrators of crimes.

Furthermore, addressing challenges associated with eyewitness testimony can help promote public confidence in the legal system. When individuals perceive the criminal justice system as fair, transparent, and reliable, they are more likely to trust its outcomes and cooperate with law enforcement authorities. This, in turn, can facilitate better community engagement, crime prevention efforts, and overall societal well-being. In conclusion, addressing the challenges associated with eyewitness testimony in criminal justice systems is crucial for upholding justice, preventing wrongful convictions, improving investigative practices, and promoting public trust in the legal system. By prioritizing research, implementing evidence-based practices, and fostering collaboration between stakeholders, we can work towards ensuring that eyewitness testimony remains a reliable and credible form of evidence within the criminal justice system.