

Journal of Multi-Disciplinary Legal Research

A Comparative Study on Reliability Of Eye-Witness Testimony

Parisa Praneetha

INTRODUCTION:

An eye witness reports for investigation and prosecution are highly reliant on a criminal justice system. Incorrect or utterly fraudulent eyewitness statements may have harmful or deadly repercussions, particularly if they are the only available proof. Psychologists and other scientists attempt to examine numerous aspects in connection with the veracity of testimonials. These considerations include features of the eyewitness, the incident being observed, the evidence etc. Testimony for eyewitnesses is a legal phrase referring to a crime by a person who has observed or has taken part in the incident. Not just the onlookers, but even victims are typically included. Not just the onlookers, but even victims are typically included¹. Testimonials can include different kinds of identification of suspects or key things, such as guns or cars, from a description of an incident or a person who has committed a crime. The evidence of the eye witnesses is an essential part of the court case. When there is no proof to grasp the accused, the testimony of the eyewitness is an efficient way to grasp the perpetrator. Although judges regard the use of eyewitnesses as their most useful tools, the evidence of eyewitnesses is doubtful since most witnesses do not offer correct information. The utilisation of testimonials is typically the principal source of evidence utilised in the judiciary worldwide. Eyewitness testimony refers to a description of an occurrence that was witnessed by individuals

Looking back to earlier judgements in India, the fact that eyewitnesses play a crucial part in the first stage of the trial of the case being established in the court was noticed as their identification may cause suspects to be arrested or convicted, but many factors are causing this unreliable and some times leading to wrongful convictions. The submission for accepting the testimony is based on substantive evidence on the fact that the human brain records and

¹ Subhodh astana, Eye-witness testimonies: A gate way to wrongful convictions, <https://blog.ipleaders.in/eyewitness-wrongfu-convictions/> June 15(2019)

retrieves material competently and consistent Concerning events². But ensuring that witnesses, whether it is vital. eyewitnesses are, or are not, credible, competent or appropriate to provide statements in the court

KEYWORDS: Evidentiary value, Eye-witness, Forensic, Reliability

RESEARCH QUESTIONS:

1. what is Eye-Witness testimony?
2. What is the Evidentiary value of Eye-Witness in the court?
3. what are the issues and barriers faced by Eye-witness in today's world?
4. what is the evidentiary value as compared to forensic report?

RESEARCH METHODOLOGY:

The reason for research is either to think about or to contribute something new to the current condition of information and the Legal research is an orderly comprehension of the law with a perspective on its headway. The technique utilized for this research is doctrinal research for example research in law which near essential source materials, it is worried about legal relational word and regulations incorporates legal ideas and standards of a wide range of cases, rules and so on.

In which the researcher choosed descriptive and anyalytical research that It portrays the phenomenon, reporting what has occurred or what's going on, without going into the explanation or cause for the equivalent. The apparatuses utilized are near and co-social strategies and fact-discovering enquiries. The analytical research anyway utilizes the facts and data accessible to make a critical assessment, the researcher needs to utilize the all around accessible facts or data, and break down them to make a critical assessment of the subject.

² Naomi singh, witness are ears and eyes of justice, February 18(2020)

LITERATURE REVIEW:

1. Kaja Glomb in her review journal 'theoretical and methodological concerns about experiments on the impact of emotions on memory performance'³ shared her views as such

“Testimony for the eyewitness is a legal phrase referring to an account of a crime given by a person who saw or was engaged in the occurrence. Not just spectators of psychological research are typically included, but also victims. The testimony of the audience may be in several forms, from an incident or a perpetrator description to identification of suspects or key things, such as weapons or cars. For decades, eye testimony research has concentrated on identifying individual, situational, environmental and system factors that affect testimony quality and quantity. Therefore, we now see that the proof may not be as reliable as we had used, Emotions are commonly mentioned among the estimator variables, the group of eyewitnesses that discounts or increases the credibility, but can only be examined post factum. For victims and witnesses, crime is a traumatic event. Even an accidental passer-by might get entangled emotionally. We have a common suspicion and distrust of emotions and people show that we regard them as a source of memory errors. Studies don't always confirm this concept, though, as we shall be seeing. Pioneers of applied psychology explored the question how emotions affect the way crimitic experiences are recalled”.

Limitations: In the research paper, mainly concentrated on emotions regarding the group of eye witness people but neglected the drawbacks that why eye witness testimony isn't much trusted in trial procedure and as the name of research suggests but the author never concentrated on psychological relation to eye witness

2. Gyanesh kumar tiwari expressed in his journal 'Evidentiary significance: Criminal Legal System'⁴

“During the last ten decades, considerable research attention has focused on the performance and witnesses' accounts. There has been a shortage of eyewitness study from a psychological standpoint. The major problem is that the study findings are not integrated theoretically. While

³ Kaja glomb, Theoretical and methodological concerns about experiments on the impact of emotions on memory performance, july 22nd 2020

⁴ Gyanesh kumar tiwari, Evidentiary significance :criminal legal system, jan11(2019)

the collected data provides a variety of intriguing insights on the behaviours of people in actual settings, we still have very little knowledge of the systems that mediate this. A second psychological shortcoming is the lack of integration of the memory performance of eyewitnesses with our understanding of the processes of perception and attention. Although eyewitness study has difficulty, it nevertheless has provided an array of descriptive knowledge valuable to the criminal justice system. Given that eyewitnesses' evidence can sometimes be essential to court processes, it is important to make available the psychological information to the criminal justice system. It is tough to decide the appropriate vehicle to do this. This work is essential in establishing how testimony of eyewitnesses is evaluated against other evidence. You might decide whether eyewitness reports should be utilised in the courts so often since jury members are not usually scientifically trained”

Limitations: This study gives a critical assessment and a judgement of its practical worth of the psychological importance of the research. Research has shown that the performance of eyewitnesses differs significantly qualitatively and quantitatively from what the average person predicts. In contrast to the lay-based memory model, the view of human memory derives from that investigation. This paper discussions limited to some of the options and reactions to this type of information in the criminal justice system.

3. Arun kumar in his article ‘Eye witness: A paradox in Law of Evidence’⁵ said that

“In criminal law proceedings, convictions take happen in India based on the facts being determined beyond reasonable doubt by the prosecution. The prosecution seeks to recreate facts of an incident past by means of direct, indirect and substantive evidence. Testimonies from eye witnesses are an account of the events from a perpetrator of the crime. They assist track the incident and in various instances identify the culprit. These testimonials are of assistance to the Court in the awareness of the crime first hand and are admissible in court in accordance with Section 9 of the Indian Evidence Act of 1872. The idea of "innocent to found guilty" is the cornerstone of all criminal trials and, even if the eyewitness is unlikely to misidentify it, the proof of such evidence drastically reduces. Therefore, the validity of an identification is crucial to decide. Factors like his capacity to remember such an occurrence, the remarkability of the event, features of the accused, the setting in which the crime occurred greatly depend on the individual's ability to identify the accused through a test identifying parade.”

⁵ Arun kumar, Eye witness : A paradox in Law of Evidence, jan11(2021)

Limitations: it aims to discuss reforms in terms of making such evidence more dependable, with special reference to an individual's ability to recollect the happenings and people involved.

ANALYSIS:

EYE-WITNESS AS EVIDENTIARY VALUE WITH COMPARITIVE CASE LAWS :

If the eyewitness statement is natural, consistent, and in line with the statements of the other testimonies, the testimony is regarded trustworthy and is therefore taken into account. It is, nevertheless, vitally crucial that the witness does not operate under any pressure, motivation or false methods when giving the testimonies. When delivering information, a witness must be totally separate from and free from any pressure. In the landmark case *pratap chauhan vs Ram naik*⁶ the supreme court held that Before examining the evidence with due caution the evidence can not be overlooked in the possible misleading inference, so the fact is that slight adjustments in prejudice can be made by the witness do not leave it unbelieved, the reactions of diverse people cannot be comparable or follow a pattern, as the reactions or comments of numerous people will always produce small differences. Each individual has a distinct method to react to a comparable circumstance, thus there is no universal guideline for the behaviour of a human.

In the case *jagdeo vs uttarpradesh*⁷, if a witness is linked with the dead witness yet the evidence given by the deceased witnesses corresponds to other witnesses, it cannot be dismissed simply because of their connection with the deceased.

No legislation rejects such proof if it is trustworthy in the instance of a kid witness. In the case of *Algupandi v. Tamil Nadu*⁸, a kid was found to be a competent witness where such a witness's testimony of truth is credible and supported by other proof of prosecution. Everyone's honesty also applies to the officer of the police. In the case of *Ram Kumar v. Delhi*, it was decided that no trustworthy proof by the police officer could be dismissed since the prosecution was not questioned by any independent witness.

⁶ *pratap chauhan vs Ram naik* (2001) AIR 164 SC

⁷ *jagdeo vs uttarpradesh* (2003) AIR 660 SC

⁸ *Algupandi v. Tamil Nadu* AIR 2012 SC 2405

In the case *Vikas kumar Rookewal vs state of uttarakhand & Ors*⁹, the supreme court held that Eye-Witness play an integral role in criminal justice and made few legislature measures for protecting the right of witness for fair trail.

In Indian courts, the bulk of the criminal cases choose eyewitness testimony. But it is well known that convincing doesn't mean precise. The testimony of the eyewitness is fragiler than many people think.

In murder instances, eyewitnesses are the most trustworthy law-enforcing witnesses. If the statement has resulted in the acquittal of one accusé and the conviction of others like in the case of *Krishna Ram v State of Rajasthan*¹⁰ the credibility and truthfulness of the eyewitness account would not be impacted. In *Edward V. Police Inspector's*¹¹ case the Supreme Court found that even if the declaration on the lone eyewitness varies from the medical report it was trustworthy evidence. The eyewitness' evidence cannot be rejected since the motive is missing.

However, it wasn't until the many failures of the evidence that the relevance of forensic and medical science were recognised. Following the Criminal Procedure Code (Amendment) Act 2005, two new provisions had been introduced enabled by both parties, with the cooperation and support of the medical practitioner, for the investigating officer to collect DNA tests. However, these parts deal to sexual offence examination. The arrival of the 1980s DNA research gave the true perpetrators and those who had been honestly and wrongfully accused of the wrongdoing with extraordinary degree of precision.

Unreliability : Research has revealed that testimony for eyewitnesses might be extremely untrustworthy. Although witnesses might frequently be quite sure that their memories are accurate when a suspect is identified, the mixture of human memory and visual perception is one of the least trustworthy types of evidence.

RELEVANT PROVISIONS :

To deliver a fair and rational justice in the trail procedure, eye witness plays important role in the initial stage where case has been built concretely ,

⁹ *Vikas kumar Rookewal vs state of uttarakhand & Ors* 2011 2 SCCC 178

¹⁰ *Krishna Ram v State of Rajasthan* AIR 1993 SC 1386 (India)

¹¹ *Edward V. Police Inspector* AIR 2015 SC 2374

According to section 164 of crpc, “records all the statements of witness given for evidence which shall hold high evidentiary value”

“Section 3(1) of the Indian Evidence Act deals with eyewitness accounts. This part offers an eyewitness' statement under oath with a significant evidence under Indian law”.

The witness has been described as someone who can supply oral or written information by making a representations to the court, for the case of Madhu Madhuranatha V. State of Karnataka. A witness must usually, unless he acts under pressure, fraud or fraudulent methods, be regarded independents.

“Article 134 further increases the eyewitness status under the Indian evidence Act. This clause provides that a number of witnesses who may be necessary to establish any truth are not determined by legislation. Even a witness can prove a fact before the Court of Justice. Even on the basis of the solitary witness, it was held by the Supreme Court”

ISSUES AND CHALLENGES FACED BY EYE-WITNESS TESTIMONY:

The testimony of the eyewitness has a very essential function during justice but in the meantime it also contains a number of inconveniences, making it disappointing proof and therefore an untrustworthy source of information in the Court. Factors which influence security

The following may be included in the eyewitness testimony:

HARRASMENT:

The witnesses had to go from afar to testify in the court many times. In order to attend and provide evidence in the court, they must leave their families in their homes and take leave of their employment. The expense of travelling they have to spend from their own money is another concern for them¹² This makes them very difficult and uncomfortable. The witnesses then feel tormented and often inclined to make false statements that directly impact the administration of justice to avert such an anguish.

AMBIGUOUS HUMAN MEMORY:

The human brain does not record all the meetings it experiences. Only descriptions of those meetings are preserved within. They might be uncannily precise in certain situations, but at the same time they can also be fictitious, although they are mostly the combination of both.

¹² A dele Quigley-McBride, Eyewitness Testimony, (Feb 22, 2018, 4:05 PM), IOWA STATE UNIVERSITY, <https://www.oxfordbibliographies.com/view/document/obo-9780199828340/obo-9780199828340-0026.xml>.

Eyewitness proof is regarded as an intensive form of evidence to convict the accused individual. In the end of the day, people store the info so they feel comfortable and happy. However, even the most confident and bloody witnesses rely on forgetful memory and predisposition. And if there is no goal to avoid then both considered as undefined¹³.

STATEMENT MADE UNDER STRESS & UNDUE INFLUENCE:

Witnesses may be under threat, inducement or promise of some future benefit while making statements or providing information. This is one of the major factors that directly affect the accuracy of the evidence and lead to wrongful conviction. Therefore it is very important for a witness to be free from any kind of threat or inducement and must not have any motive while testifying.

MIS-INFORMATION:

The considered misinformation effect because the disinformation individuals were exposed to after the event appears to taint the memory of the subjects they saw. Hundreds of following research have shown that misleading information presented to an event might taint the memory. The disinformation in these tests led individuals to misrepresent anything from the minor but important features of the look of the culprit to items as big as a barn that was absolutely nonexistent.

“The increasing scientific literature on eyewitness proof demonstrates the relevance of social science as a way to support and address legal challenges. An expanded use at the preliminary stage of eyewitness experts, changes in how eyes are interrogated and different other elements to be examined in a lawsuit involving eyewitnesses indicate a tangible and legitimate framework improvement that has come about as a result of this research line”.

EYE WITNESS TESTIMONY & FORENSIC REPORT:

“The evidence of eyewitnesses under the Indian Legal system is of primary importance. In most criminal instances, the value of testimony is favoured by the court. Previously, there are no particular legislative restrictions on the admission of science and technology or forensics

¹³ Manveen Singh, In Eyes, We Trust: The Changing Landscape of Eyewitness Testimony, 37 NORTHERN ILLINOIS UNIVERSITY LAW 444 (2017).

findings pursuant to the Indian Evidence Act of 1872 or the Criminal Procedure Code, 1973, When the disadvantages of testimonies were explored and the relevance of medical and forensic science was realised, the value of forensic research was improved. Following the Criminal Procedure Code of 2005 (Amendment Act),” two new provisions were introduced entitling the investigative officer, with the cooperation and assistance of a medical practitioner, to acquire a DNA sample from the accused and the victim. But the major subject of these parts is a medical evaluation in situations of sexual crimes, No much evidence is supplied even now to forensic or DNA findings. Most times, on the basis of legal or constitutional prohibitions, it has been denied admittance by the judges and witnesses' statements are favoured. However, if stronger evidence and the witness testimony are provided for the forensic reports, there will be less possibilities of unjust convictions.

The accuracy of DNA or forensic reports is more dependable than testimonials because eyewitnesses may mislead, while forensic reports vary less. In eye-witness testimony, issues such as decline in memory, lack of observance, mental shock, trauma and many other factors lead to its inaccuracy. It is therefore a doorway for false convictions and leads to a miscarriage of justice if a person is convicted wrongly¹⁴.

CONCLUSION: *Journal of Multi-Disciplinary Legal Research*

The allowability of the statement of the eyewitness is founded on the assumption that the witness who speaks under a sermon is true until their testimonies are demonstrably untruthful and untrustworthy. A close inspection should be made while the witness' statement is permitted. The court has a responsibility to assess if, when providing testimony, the eyewitness has had an improper influence or not; whether or not the eyewitnesses have been threatened, etc. The witnesses must not be impressed so that they may provide a testimony that is unbiased and true and that helps to offer fair judgement. However, documented evidence typically undermines oral testimony as the eyewitness can frequently be deceptive but the evidence is less likely to be incorrect. Especially the assumption that the memory accurately delivers an understanding account is often incorrect, much like a video camera. Human memory has

¹⁴ Crime and Justice Vol. 3 (1981), pp. 105-151 (47 pages), The University of Chicago Press

progressed such that our actions may be directed and given an individual sensation of character. While we look upon our meetings or experiences, we frequently prefer to limit and overlook others. The memory of man is smooth.

RECOMMENDATIONS / SUGGESTIONS :

- Laws regarding the rights of witness has to be strengthened
- Advise police officers to question witnesses as quickly as possible following commission of a crime and record it in video
- Make sure that the police write why a person is considered guilty before he or she is placed under lines
- Instead of a show with only one suspect, have a line-up with multiple persons.
- Avoid repeating a lineup with the same witnesses and suspect
- Record the whole procedure on the video based on a statement of confidence issued by the witness before the lineup after completion of the lineup.
- recognising and enabling best practises in the law enforcement eyewitness procedures
- enhance the value of evidence in court for identification of eyewitnesses
- improve the eyewitness identification scientific base.

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