

HOSTILE WITNESS

Hostile is the word which may be referred not only for the witness, but also for objects, things, circumstances and situations. Weather conditions may be hostile, atmosphere may be hostile, working conditions may be hostile etc. Hostile witness is someone who is brought by the party in the court to support its case but after entering the witness box he, either, denies support to the party, or, in greater degree of hostility deposes something which is useful to the adversary. The Evidence Act while dealing with the aspects of hostile witness does not use the word hostile but deals with all its implications. The Code of Criminal Procedure & the Indian Penal Code also touch this aspect by declaring perjury an offence & by providing procedure to deal with this offence.

When a person or a party goes to the court either to assert its right or to prove some act of the adversary which is defined as an offence he has to prove it by adducing evidence. Section 101 of the Evidence Act lays burden of proof on the party who desires that the court should give judgment as to any legal right or liability on the basis of which he asserts existence of such right or liability. In case of a criminal trial the proof is required to be beyond reasonable doubt. When a party is required to prove certain fact which has been seen, heard or sensed by a particular person, he has to examine said person to prove said fact. Similarly, the witness is also required to prove documentary evidence as the witness plays vital part in recording documentary evidence by scribing the document, executing the document or attesting the document. In this way the witness is an integral part of a trial before the court.

It is expected that the witness who has to depose before the court on oath or assertion, shall depose before the court truth. It is however, not certain as to what is the truth in a trial. The parties come before the Court with their own assumptions or projections & they want the court to believe these assertions of projections as truth. They bring the witness to support their assertions. For the court it is pursuit of truth. So what will emerge at the conclusion of trial will be a truth & it will continue to be truth till it is not unsettled by the appellate court.

When a party brings the witness before the court with a hope that the witness will depose the facts canvassed in his plaint it may be possible that the fact may not be correct, however, the witness when refusing to assert this fact is blamed as hostile witness. This may be the reason why the author of the Evidence Act did not use the word hostile for such a witness. At the same time the Evidence Act doesn't create any situation to compel the said witness to depose exactly what the party desires him to depose. The Evidence Act only provides liberty to the party who brings the witness to put him leading questions which are not allowed to be asked in examination in chief. In other words it can be said that every fair opportunity is provided to the party to prove the facts asserted by him even by cross examining his own witness & try to

bring before the court that the witness by character is not reliable or is won over by other side.

The instances of hostile witness are less in civil litigations but rampant in criminal trials. The social impact of witness turning hostile in civil litigation is not that serious because it will affect only individual rights, however, the impact of prosecution witness turning hostile resulting in acquittal of a criminal has far reaching effect on the society. Since colonial period there is distrust in law enforcing agency & the Code of Criminal Procedure, therefore, requires that during investigation of a crime the action of the police officer collecting incriminating evidence should be with assistance of & in presence of at least two witnesses. Thus, in case of any criminal offence the investigation officer has to collect evidence like facts existing on the spot of incident by recording spot panchanama, seizure of weapon by recording seizure memo, seizure of contravened articles by recording seizure memo, collection of medico-legal evidence such as blood samples etc. is required to be done in presence two independent panchas i.e. witnesses. Collection of this evidence is required to be proved by examining the witnesses. When these witnesses turn hostile there is a question mark on proper collection of evidence by the investigating officer. Eventually, benefit of the doubt created about fair collection of evidence goes to accused resulting in acquittal of the accused. This happens in multiple cases and rate of conviction even in heinous crime in India is single digit. Large number of acquittals encourage the criminals to continue to commit crimes and frustrate law abiding citizens as there is continuing alarm in society of occurrence of crime at any place, at any time.

The solution to remove or reduce the instances of witness turning hostile lies in multiple measures. In the civil litigations when the claim is based on registered documents or the documents created in regular course of business requirement to prove the documents by examining witnesses should go away. This will streamline the civil trial & reduce the risk of defeat of genuine claim as the witness turned hostile. In case of criminal trial collection of evidence like medico-legal evidence, facts appearing at spot panchanama if recorded by electronic devices will be admitted in evidence without examining witness or may be considered to be proved even if the witness turns hostile. Appropriate changes are required to be made in the Code of Criminal Procedure to assign credibility to the evidence of investigating officer. Above all the society shall have to understand that the legal system has given a pivotal role to the members of society to assist the court in dispensation of justice by becoming the part of trial as a witness. More & more citizens have to come forward to play this role & assist the justice delivery system & law implementing machinery. The members of the society who play this role shall determine to depose truth before the court without fear and by avoiding all sort of offers, pecuniary, or, otherwise made to them for deviating from the truth.
