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RULES OF VERBAL INTERACTION WITH CRIMINALS/EYEWITNESSES IN COURT TO FOSTER COOPERATION.

Pratibha Sinha

M.Phil., Roll No.: 150584 Session-2015-16

Department of Psychology, B.R.A. Bihar University, Muzaffarpur, India

E-mail: pratibhasinha777@gmail.com

Abstract

The purpose of this chapter is to provide practical guidance on the protection of persons who come into contact with HROs in the context of human rights monitoring and fact-finding activities (hereinafter referred to as cooperating persons), and who may face threats or be subjected to reprisals as a result of that contact with HROs. interaction. The actions carried out by HROs when they are present in human rights field presences are the primary emphasis of this chapter as well as the Manual as a whole.

Keyword: HROs, practical Guidance, primary emphasis

Introduction

The principles and many of the approaches described in the chapter may also apply, mutatis mutandis, to the work of other international human rights monitoring mechanisms. These mechanisms include special procedures of the United Nations Human Rights Council, international

Pratibha sinha*, *Department of Psychology, B.R.A. Bihar University, Muzaffarpur, India.*

E-mail: pratibhasinha777@gmail.com

commissions of inquiry, fact-finding missions, and country visits by the human rights treaty bodies. It is important to note that the principles and many of the approaches described in the chapter may also apply to the work of these other international human rights monitoring mechanisms.
For the purposes of this chapter, persons cooperating with human rights field presences can be: Victims, witnesses, and sources of information on human rights violations;2 Persons providing assistance to HROs in the course of their human rights monitoring and fact-finding activities, such as human rights defenders or staff from local civil society organizations; Employees of the field presence, including national human rights officers and assistants, interpreters, and other personnel; Other persons cooperating with human rights field presence

In the context of this discussion, the term "protection" refers to the application of all measures that can contribute to preventing or minimizing the risk of harm, and/or reduce any threats that can jeopardize the life or physical integrity of cooperating persons, and/or stop harm from being inflicted on them. Protective measures encompass both those that are done to avoid putting a cooperative person at danger (preventive measures), as well as those that are implemented when such a person is faced with a threat or is subjected to reprisals (response).

It is the shared responsibility of the duty bearers, who are primarily states and armed groups, who are obligated to respect, protect, and fulfil human rights norms and standards; the victims, witnesses, and other cooperating persons, who may face threats or be subjected to reprisals; and those who have the ability to positively or negatively influence the safety and well-being of cooperating persons at risk, and directly or indirectly strengthen their protection. Protection of rights rests primarily on the shoulders of the state, which is accountable to all individuals who fall within its sphere of influence for ensuring that their rights are respected. Consequently, any victim, witness, or other individual collaborating with a field agency is protected from prosecution.

Everybody has the right to have his or her natural dignity respected at all times, as well as the right to be safeguarded from threats and reprisals. This right exists at all times. Any individual whose rights have been infringed upon shall have the ability to seek remedy via the appropriate national judicial, administrative, or legislative authorities.

Pratibha sinha*, *Department of Psychology, B.R.A. Bihar University, Muzaffarpur, India.*
E-mail: pratibhasinha777@gmail.com

When a state is either incapable or unwilling to defend its people from a violent scenario that endangers the lives and safety of its members, or when the state itself is the aggressor in the violent situation, the protection of the population may become a shared duty. Within the bounds of internationally agreed-upon safeguards, this obligation may be taken up, in whole or in part, by the international community, either in collaboration with the respective state in question, independently, or even at times in opposition to Personal responsibility for one's own safety: in many situations, people make their own decisions about the risks they feel are acceptable or unacceptable in relation to the activities they regard to be vital to engage in. An evaluation of this kind is individual and develops over the course of time; it is mostly predicated on one's own subjective views, as well as one's capacity to analyse the surrounding political, social, and security settings, and estimations of the prospective repercussions. 6 It is essential for individuals to adopt strategies to prevent and/or minimise the risk of harm they may be exposed to in a given situation and to primarily rely on themselves for their protection if duty bearers and other actors have limited means to effectively protect them. If this is the case, it is essential for individuals to adopt these strategies.

It is the professional obligation of human rights officers to ensure that they do no damage. The sheer fact that a field presence is located in a nation may alter the general public's sense of safety and cause people to engage in behaviors that they believe are safe. However, they might incorrectly assess the danger and put themselves in jeopardy as a consequence. HROs have an institutional and a professional obligation not to put the life or security of cooperating persons in jeopardy and to assist in protecting them if those cooperating persons face threats or are subjected to reprisals for having cooperated with the field presence or for being suspected of having done so.

There is a lot of evidence that points to the hazards of working in law enforcement. Every day, there is the possibility of suffering some kind of physical injury. However, traversing the challenges on the way to successful communication may be especially dangerous for criminal justice professionals who are unprepared or ill-prepared to do so. It is essential to make an effort to train law enforcement personnel to use communication skills effectively in order to enhance the image created by speech in this day and age, when the law enforcement profession has become associated

Pratibha sinha*, *Department of Psychology, B.R.A. Bihar University, Muzaffarpur, India.*
E-mail: pratibhasinha777@gmail.com

with racism and racist statements made by officers, as well as a lack of communication skills, as demonstrated by the use of malapropisms by personnel.

You may learn about the most recent issues facing the law enforcement community by reading any newspaper, turning on the television, listening to any radio station or news network, checking out any social media site, or accessing any news network. A police officer takes a bribe, a state trooper attacks a driver who is speeding, a federal official gives critical information to a foreign power, evidence is mismanaged, and witnesses lie under oath; the list of examples goes on and on.

Examine the blunders that occurred during the fatal shooting of Walter Scott in North Charleston, South Carolina; the fatal shooting of Daniel Kevin Harris, a deaf driver who was stopped by a North Carolina trooper for speeding; the application of an improper chokehold to Eric Garner by a New York City police officer that resulted in Garner's death; and the fatal shooting of Oscar Grant III by a BART police officer in Oakland, California; all of these incidents involve instances in which law enforcement failed in Not only was law enforcement ineffective, but the agency's reputation took a serious hit as a result of these despicable occurrences. Can these less-than-successful outcomes be traced back to a single cause or a sequence of factors that worked together to produce these results? The reason supplied by law enforcement may be that inadequate planning and execution was to blame for the incident; nevertheless, it is more probable than not that the proximal cause was a lack of good communication skills on the part of officers, agents, and other staff. It's not uncommon for there to be difficulties with communication inside the prisons system either.

SECURING PROTECTION OF WITNESSES

Witnesses are essential to the functioning of the criminal justice system because they give the information and testimony that is required to identify, investigate, and prosecute illegal behaviour, as well as to convict those who are guilty for it. Witnesses must be able to completely cooperate and testify without fear in order for the systems to work effectively and accomplish their intended aims. This is a requirement for the systems to function correctly.

This is especially true in the investigation and prosecution of organised crime and terrorist groups, where witness intimidation and retribution are frequent parts of their modus operandi, since both of

Pratibha sinha*, *Department of Psychology, B.R.A. Bihar University, Muzaffarpur, India.*
E-mail: pratibhasinha777@gmail.com

these types of organisations are subject to reprisal for testifying against them. One may say the same thing regarding widespread corrupt practises. All of the influential players participating in the scam, including corrupt leaders of the government, officials who took bribes, and successful businesspeople, will use whatever measures are available to them to prevent witnesses from coming forward and collaborating with the police.

REVIEW LITERATURE

According to Devlin (1976), the London Metropolitan Police were the ones who carried out the country's first ever known usage of an identification parade in the year 1860. These types of parades, which are known as "line-ups" in the United States, are used by law enforcement agencies all over the globe to determine if a suspect who is now in police custody is, in fact, the same individual that an eyewitness claimed to have seen at the scene of a crime. The witness is shown the suspect and asked, "Is this the man that you saw?" in a confrontation, while in a dock identification, the witness is asked to confirm at trial that the person they saw in connection with the crime is the person standing in the dock. Identification parades have clear advantages over such suggestive procedures as confrontation and dock identification (Rust & Tredoux, 1997). On the other hand, establishing guilt in England and Wales solely on the basis of a person's ability to positively identify them during a parade has resulted in several instances of justice being administered incorrectly. Problems of this kind appear certain to continue occurring for as long as a single positive identification is all that is required to establish guilt against an accused person (Thomson. 1995). This article examines the development of identification processes in England and Wales, as well as some of the more notable instances of incorrect identification that have arisen as a direct consequence of its use (or misuse). It breaks that history up into three distinct periods: from the beginning of the 20th century until the publication of the seminal Devlin Report in 1976; the Devlin Report and its immediate aftermath; and finally, from the publication of the Devlin Report to the present day. This paper discusses the development and improvement of the procedural requirements for establishing identity. However, it raises the question of whether the identification process can ever be entirely immune from the inherent psychological fallibility of human perception and memory, and whether the time has now come for the law to acknowledge this.

Pratibha sinha*, *Department of Psychology, B.R.A. Bihar University, Muzaffarpur, India.*
E-mail: pratibhasinha777@gmail.com

Devlin, 1976,When the Metropolitan Police Department first started using formal identification parades, they also developed a set of standards to guarantee that the process was conducted in a way that was fair to both the witness and the accused. However, this straightforward advice was not enough to prevent Adolph Beck from being convicted twice for crimes he did not commit solely on the basis of identification evidence. Both times, Beck was found guilty of the offences. On the basis of positive identifications of Beck made by ten of the con artist's victims, Beck was first sentenced to prison in 1895 for a string of confidence tricks that he had perpetrated on impressionable young ladies. Beck was sentenced to six years in prison before being released in 1901, only to be convicted once more in 1904 for a new series of the same audacious frauds. Once again, the only evidence against him were positive identifications, this time by four more victims. Beck was sentenced to six years in prison before being released in 1901. In 1904, he was convicted once more for a new series of the same audacious frauds Beck was found guilty by a jury in spite of his protestations, and the only thing that saved him from receiving an additional lengthy jail term was a sceptical judge's quick delay of punishment. In the meanwhile, the genuine con artist, Wilhelm Meyer, was taken into custody while he was in the process of pawning part of the money he had stolen. Beck was granted clemency and given compensation, and a commission of enquiry was established to explore the factors that led to these parallel violations of legal procedure (Watson, 1924).

RESEARCH METHOLODOGY

LEGAL PROVISIONS DEALING WITH WITNESS

The laws of India have rules, both legal and procedural, that deal with witnesses at a variety of phases of the legal process. This chapter provides a summary of the important legal provisions that are pertinent to the topic at hand.

Legal Provisions

In recent times, the concerns with the hostility of witnesses and other connected topics have garnered the attention of the appropriate authorities. In its 155th report, the Law Commission made the recommendation that it should be made mandatory for investigating officers (IOs) to get statements of all material witnesses, questioned by him during the investigation, recorded on oath

Pratibha sinha*, *Department of Psychology, B.R.A. Bihar University, Muzaffarpur, India.*
E-mail: pratibhasinha777@gmail.com

by magistrate. This recommendation was included in the Law Commission's 155th report. The Law Commission believed that by doing so, it would have been possible to prevent witnesses from becoming hostile of their own free choice. A witness in a court case who is considered to be so unfavourable to the party that summoned them that they are able to be cross-examined as if they were called to testify by the other party.

The testimony of witnesses is an essential component of every case. As a result, from India's pre-independence period right up to its post-independence period, every act and legal provision had specific provisions for them. These requirements ensure that evidence that is objective and reliable may be gleaned from them throughout the process of settling a case. In order to facilitate a better understanding of the many provisions that have been established in various Acts, we have separated the provisions that relate to witnesses into the two categories that will be discussed below.

- Provisions Relating to Witnesses in Procedural Acts
- Provisions Relating to Witness in Different Acts

DATA ANALYSIS

WITNESS IN HISTORICAL CONTEXT:

The role of the witness as an essential component in the administration of justice has persisted through the centuries. Truth and impartiality are required to be the essential components of justice since they are the foundational principles of justice. As a result, it is now the responsibility of a bystander or a third party to act as a witness and either verify the details of the occurrence or report them to the appropriate authorities. As a result of the witness making their remarks while under oath, their statements are given the highest level of credibility and are accepted as being accurate and true. As a result, the role played by witnesses in helping the administration of justice has been of the utmost significance.

In legal proceedings, it is not a novel concept to request that a witness provide his or her testimony. Even in ancient India, you may find examples of it. "The parties should themselves provide who witnesses who are not far separated either by time or location," Kautilya writes in his renowned

Pratibha sinha*, *Department of Psychology, B.R.A. Bihar University, Muzaffarpur, India.*
E-mail: pratibhasinha777@gmail.com

book "Arthasastra." On the direction of the judge, witnesses who are difficult to reach or who refuse to attend will be compelled to give their testimony in court.

In the early written texts, there was a distinction made between human and divine evidence for the different types of proof. The human forms of proof were further broken down into paper evidence, possession evidence, and witness evidence. The well-known study of Yajnvalkya2 describes three different lines of evidence. Additionally, it provides directions even for the evaluation of different handwriting styles.

However, in order to comprehend what function the witness plays in the Indian Criminal Justice System, we need to trace the history of the country's Law of Evidence. This will allow us to answer the question, "What is the role of the witness in the Indian Criminal Justice System?" In order to do this, we will need to conduct research on the topic while referring to the following three distinct time periods:

- the Ancient Hindu period
- the Ancient Muslim period
- and the British period

LAW OF EVIDENCE IN ANCIENT HINDU PERIOD

It is possible to trace the legal proof back to the Hindu Dharma Shasta's during the Ancient Hindu era. In Radha Kumod Mukherjee's Endowment Lectures on the Hindu Judicial System, which were given by Sir S. Vardhachariar, a thorough discussion of the historical context of the Law of Evidence and its subsequent evolution may be found.

The Hindu Dharma Sastras state that the desire to learn the truth should always be the driving motivation behind any trial. Yajnvalkya is quoted as saying, "The King should make judgements in conformity with the actual facts, and discard what is fake." In the event if two parties in a case made allegations that contradicted one another, the people who authored Hindu law took every measure that was humanly feasible in order to ascertain the truth. The Shastras mandated that the parties who appeared before the court had to be persuaded to acknowledge the reality of the situation. According to Manu, the King who presides over the tribunal is the one who is responsible

Pratibha sinha*, *Department of Psychology, B.R.A. Bihar University, Muzaffarpur, India.*
E-mail: pratibhasinha777@gmail.com

for ascertaining the truth and determining the correctness of the testimonies of the witness, the description, time, and place of the transaction or incident that gave rise to the case, as well as the customs of the country, and pronouncing the true judgement.

Vasista acknowledges the existence of three distinct types of evidence: likhitam, sakhino, and parmanan. Trividham Smritham. i.e.

- The Document (Lekhya)
- The Witnesses (Sakshi), and
- Bukhthi (Possession)

Lakhia (Documentary Evidence):

This Lakhia, Also Known As Documentary Evidence, Was Further Divided Into Three Categories, Which Were Respectively Known As Rajasaksika, Sasaksika, And Asaksika.

- **Rajasaksika:** A rajasaksika is a document that is completed in the King's Court by the King's clerk and confirmed by the presiding officer affixing the seal in a manner that is comparable to that of a contemporary registered document.
- **Sasksika** The Sasksika is an entirely private document that may be authored by anybody and must be held by the witness in their own hands.
- **Asaksika:** An asaksika is a document that was created by the parties themselves, making it a piece of evidence that may be admitted.

Exactly as it is the case in modern times, when documented evidence is favoured over oral testimony, the Ancient Hindu Law of Evidence favoured documentary evidence over oral evidence as well. However, the people who were responsible for creating Hindu law were most likely aware of the limitations of the recorded evidence when compared to the possibility of falsification. They have supplied detailed guidelines to follow in order to validate the authenticity of the document. In ancient Hindu law, a document was regarded to be vitiated if it had been written by a dependent child, a lunatic, a woman, or a person who was under the influence of fear. There were additional standards for determining the authenticity of a document by a comparison of the handwriting in question, which was especially useful in situations in which the executants were no longer alive.

Pratibha sinha*, *Department of Psychology, B.R.A. Bihar University, Muzaffarpur, India.*
E-mail: pratibhasinha777@gmail.com

Sakshi (Witnesses):

The guidelines for judging whether or not a witness is credible were established by the people who were responsible for developing Hindu law. People whose reputations were very suspect were regarded as tainted witnesses, and it was determined that they were not qualified to testify. In order to guarantee that witnesses would tell the truth, Shastrakartas, who are analogous to modern-day Advocates, were required to be present at the trial. The witnesses were asked to conduct a quick Sankalpa (ablution) before delivering their testimony. They were also instructed to turn towards the auspicious direction and were admonished to proclaim the truth in the most serious manner possible, in accordance with their deepest religious convictions. It was essential of the judges that they pay attention to the manner of the witnesses so that they can make a decision on the credibility of the witnesses. According to the Vishnu Puran, "a false witness" may be identified by his changed appearance, by the colour change in his countenance, and by his conversation that wanders away from the matter at hand. Yagnavalkya is quoted as saying, "He who moves around from place to place, licks his lips, whose forehead perspires, whose countenance changes colour, who with a dry tongue and stumbling speech talks much and incoherently and who does not remain in one place for an extended period of time, this person is a liar." a person who chews his lips, who by mental, verbal, or physical activities gets into a sickly condition, is believed to be a contaminated person; thus, you should not pay attention to what another person says or sees.

Bhukhti (Possession):

In an agrarian economy such as that which existed in Ancient Hindu India, conflicts about possession of landed property made up the majority of the litigation that took place. Along with papers and witnesses, possession was acknowledged as a form of proof that may establish right and title. Additionally, possession was one of the ways of proof. A presumption exists in the current Evidence Act as well, which states that the owner of anything is presumed to be the person who is in possession of that object.

LAW OF EVIDENCE IN ANCIENT MUSLIM PERIOD

The book "Muslim Jurisprudence" written by Sir Abdul Rahim provides further information on the historical context of the Law of Evidence in Ancient Muslim India. The concept of justice is

Pratibha sinha*, *Department of Psychology, B.R.A. Bihar University, Muzaffarpur, India.*
E-mail: pratibhasinha777@gmail.com

emphasised heavily throughout the Holy Quran. It asserts that justice is the cornerstone upon which the whole creation was built, and that one of the many wonderful characteristics of God is that He is just. As a result, the conception of justice in Islam is that the administration of justice is a divine propensity.

Oral evidence and written evidence are the two categories into which the legal authorities who developed Mohammedan law divide all of the evidence. As things are right now, oral evidence may be further broken down into two categories: direct evidence and hearsay evidence. Oral testimony seems to have been given more weight than documented evidence, despite the fact that properly completed papers and records maintained throughout the course of business were both considered valid forms of evidence. 8 The court has insisted on questioning the party that generated the papers whenever such documents are brought into evidence. The Holy Quran has a verse that reads, "O True Believers: Observe justice, when you stand as witnesses before God and let not animosity against any entice to you to do evil, but behave justly." This verse is in reference to oral testimony. This will bring to a greater degree of piety. Be afraid of God, for God is completely aware of everything you do.

The Holy Quran says in another verse, "O: You who believe, be maintainers of justice when you bear witnesses for the sake of God, even though it be against yourselves or your parents: or your close relations, whether the party be rich or poor, for God is most competent to deal with them both," which translates to "Be maintainers of justice when you bear witness for the sake of God, even though it be against yourselves or your parents: or your close relations." Therefore, do not follow your low inclination in delivering testimony, because this might cause you to veer from the path of justice, and if you veer or turn away from the path of justice, then clearly God is aware of what you do"

When questioning witnesses during the ancient Muslim period, the courts were required to pay close attention to detail. During the proceeding, the court places a significant amount of weight not only on the reliability of the parties but also on the witnesses. This may be shown by referring to an instance from that time period in which the Mughal Emperor Shahjehan was called upon to hear a case. In that particular incident, a Hindu scribe said that a Mughal soldier had absconded with his wife and married another woman. The King issued an order that the individual be taken into

Pratibha sinha*, *Department of Psychology, B.R.A. Bihar University, Muzaffarpur, India.*
E-mail: pratibhasinha777@gmail.com

custody and brought before him immediately. When the individual in question was presented, the lady who had been referred to as the Hindu scribe's wife disputed that she was in fact his wife. As the Emperor Shahjehan saw her manner, he unexpectedly requested that she fill the inkpot for the court. The king was under the impression that the woman must be the Hindu scribe's wife due to the fact that she performed the task with such dexterity and cleanliness.

Documentary Evidence

Additionally, the Ancient Muslim Law acknowledges the validity of documentary evidence. However, there were some papers that were not accepted as proof in the Ancient Muslim Courts. These records included: Documents that were believed to have been vitiated under Ancient Muslim Law and were not acknowledged to be entered as evidence were those that were executed by certain categories of individuals. Women, children, alcoholics, gamblers, and criminals were not considered competent to execute any documents, and as a result, the documents that were executed by such types of people were not admissible (as evidence) in Ancient Muslim Courts. Other categories of incompetent signers included those who were under the influence of drugs or alcohol.

CONCLUSION

In this section of the chapter, we draw many significant findings from our research on 798 witnesses throughout the four states that were chosen. According to the findings of this research, a sizeable proportion of the individuals whose testimonies were used for this project had an education of upper secondary level or above (58.6 percent). A growing number of witnesses with postgraduate degrees were found in Maharashtra (5.9 percent), with Madhya Pradesh coming in second (4.9 percent). In the instance of Maharashtra, it was observed that the number of respondents with no formal education was the lowest (1.9%). According to the caste profile of the witnesses who participated in this research, the vast majority (43.7 percent) were classified as belonging to the "General" group, while 31.5 percent were classified as belonging to other categories. to the category of 'Schedule Tribe' (S.T.), whereas only 7.1 percent of witnesses belonged to the category of 'Schedule Caste' (S.C.), and 17.7 percent of witnesses belonged to the category of 'other backward class.' Sixty-one point seven percent of those who participated in this survey reached the conclusion that the adjournments occurred much too often. The respondents in Rajasthan (19.3 percent) were

Pratibha sinha*, *Department of Psychology, B.R.A. Bihar University, Muzaffarpur, India.*
E-mail: pratibhasinha777@gmail.com

the most likely to agree with this impression, followed by those in Karnataka (16.7 percent). The state of Maharashtra had the most proportion of respondents who did not agree with this viewpoint (12.7 percent), while the state of Rajasthan had the smallest proportion of respondents who fell into this group (0.9 percent). The current research surveyed the perspectives and experiences of witnesses, and found that 61.7 percent of respondents agreed that adjournments occur too often, whereas 31.8 percent of respondents did not support this position. The majority of the respondents in the first category, or 43.8% of them, belonged to the 'General' group, which was then followed by the 'Schedule Tribe' (S.T.) category (31.1 percent).

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Pratibha sinha*, *Department of Psychology, B.R.A. Bihar University, Muzaffarpur, India.*
E-mail: pratibhasinha777@gmail.com