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The Reliability of Eye witness Testimony

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Eyewitness testimony is marred by dormant memories, prejudices, and distortions, despite the best efforts a potent type of proof in censuring the guilty. "Witness is the eyes and ears of justice," said Jeremy Bentham, a great jurist, and philosopher. As a result, memory can be either extremely clear or quite vague. Both are intangible in the absence of objective evidence. The spectator testimony had long been the significant conclusive data of evidence in astronomer prosecutions. Only the defendant's signed acknowledgement would persuade a jury of guilt. A witness pointing to the witness stand is a watershed moment because it indicates that this case is truly admissible in court.

Keywords: *eyewitness identification, evidence, reliability, accuracy.*

INTRODUCTION

The testimony of eyewitnesses is not the only criteria for establishing its authenticity and veracity. Many people's false testimony is more convenient than eyewitness testimony. In the 1980s, DNA technology analysis¹ was launched which transformed forensic science, enabling a transcendent degree of truth concerning the identity of true delinquents vs spotless people falsely held for the wrong committed. Much of the settled cases were scrutinized as a result of genetic fingerprinting. Since 1989, DNA evidence is thought to have exonerated 358 persons

¹ Thomas D Albright, *Identification of Culprit : Assessing Eyewitness Identification* (first published in 2014) 170

convicted of capital offenses and condemned to death. Seventy-one percent had been convicted based on misidentification by eyewitnesses and had spent an average of 14 years in prison before being exonerated. Cross-racial misidentification accounted for 42% of all misidentifications (221 out of 358 were African American). In addition, 28% of the instances featured a fake confession. It's this idea that passer-by testimony is dependable & inerrant is conclusive, and statistics clearly show that observer identification can be distorted irrespective of the evidence provider's knowledge. When it comes to recalling things, recollections are not as accurate as video cameras. Cognizance evolved to inculcate a distinct feeling of identification and to gate to our activities. We are predisposed to recognize and accentuate certain experiences by dismissing others. Recollection is malleable.

RESEARCH METHODOLOGY

Eyewitness testimony instils a great deal of trust. This is due to several factors. To begin, in popular culture and literature, detectives (such as Sherlock Holmes) and witnesses are shown as having extraordinarily definite memory. Second, people believe that crimes and accidents should be remembered because they are unique, distinct, stressful, and often terrifying events. In truth, stress and worry can impede memory development since memories are constructed on information obtained after the initial event. People underestimate the rate at which they forget things. Third, onlookers are typically particular and confident, making their verdicts convincing but not always right. Reminiscence distortion ²is prevalent subconsciously. Attestors believe their story of events, no matter how wrong it could be.

ASSOCIATED MYTHS

- People will never admit to a sin they did not commit.
- Flashes of the memories, which are evocative, emotionally engaging memories of schooling for a subjectively significant event, are more accurately remembered than monotonous memories.

² B W Behrman & S L Davey, 'Eyewitness identification in actual criminal cases : an archival analysis' (2001) 25 (4) Law Hum Behav., 91 <<https://pubmed.ncbi.nlm.nih.gov/11688369/>> accessed 07 July 2022

- Through hypnosis, meticulous memories can be recuperated or proliferated.
- Suppressing traumatizing childhood nostalgia, but they could get regained via treatment and always be seen as genuine, rational, & true.
- Lie detector tests consistently detect deception and deception.
- Children are frequently considered "excellent eyewitnesses."

REVIEW OF LITERATURE

There is a lot of evidence to back up the concept that eyewitness recollection is inherently questionable. First, a Google search for "eyewitness recollection is unreliable" produced 2,250 results. The precise term "eyewitness memory is reliable" produced two matches. Second, the late U.S. Supreme Court Justice William J. Brennan Jr. 2017 quoted "eyewitness identification": "At least since *United States v Wade*³, the Court has recognized the inherently suspect qualities of eyewitness identification evidence, and described the evidence as 'notoriously unreliable.'" Now, the remainder of the given record is constructed in such a way as to justify Mr. Brennan's saying of a beholder's recollection.

Next, many books related to the study of mind transmit an idea that viewer recollection⁴ is faulty, which literary critics may readily authenticate to themselves if a nearby bookshelf has an introductory psychology work. However, psychologists that started programs in the 1970s had continually expressed doubts about the validity of eyewitness identification. Eyewitness researchers have discovered that false identification rates can be unexpectedly high when using diverse tactics like filmed shows and live-stage crimes. Furthermore, when selecting someone from a line-up by mistake, eyewitnesses frequently express conviction. Although the researchers were captivated by their findings, it wasn't till the late 1990s that the criminal justice experts started to take the research earnestly.

³ *United States v Wade* [1967] 388 US 218

⁴ Yuille, J C & Cutshall, J L, 'A case study of eyewitness memory of a crime' (1986) 71 (2) *Journal of Applied Psychology*, 291-301

Although we have not reviewed every psychology textbook, we believe it is reasonable to say that no textbook gives the notion that eyewitness memory is reliable. This is because DNA and fingerprint evidence is credible when they are not tainted or smudged and when correct testing protocols are followed. Instead, most textbooks convey the notion that practically everyone in our industry shares: eyewitness memory is truly untrustworthy. It is widely held which is now incorporated in amicus briefs filed by The American Psychological association on the reliability of eyewitness recall (APA). According to the legal documents, the judgments about observant recall are based on experimentation and have practically universal approval in the profession. According to a recent court brief advice, mistake rates might be substantial even among the most aggressive witnesses. In addition, to identification accuracy⁵ researchers have performed studies that track respondents' estimates of their confidence in their identifications.

According to the APA amicus brief, "while the unreliability of eyewitness identifications is generally acknowledged in the scientific world and among many lawyers, lay jurors 'do not understand it.'" Until the 1970s, and to some extent still today, the judicial system treated trustworthy and confident eyewitness testimony as essentially infallible. It was a groundbreaking discovery sparked by the latest ideas for biomedical examination and bystander identification methods. Though all of these are encouraging advances, we feel that one astonishing discovery concerning the malleability of observer memory had resulted in a dramatic reversal. This is because the profession now considers eyewitness recollection to be not only potentially but also **intrinsically** unreliable. Memory is only reliable when the proof isn't tainted when a suitable course of action is followed, and when the eyewitness's conviction is taken into consideration.

METHOD

Their major types of witnesses, according to Section 3 of the Indian Evidence Act of 1872:

⁵ Spring, T, Saltzstein, H D, & Vidal, B, 'A moral developmental perspective on children's eyewitness identification: Does intent matter?' (2015) 3 (1) Archives of Scientific Psychology, 7-7
<<https://doi.org/10.1037/arc0000011>> accessed 07 July 2022

⁶ Gary L Wells, 'Adult Eyewitness Testimony' (2003) 54 (1) Annual Review of Psychology, 277 , 95

1. Witness Statement
2. Documentary proof

Section 3(1)⁷ of the **Indian Evidence Act 2015**, applies to **eyewitness testimony**. According to India's law, the testimony of an eyewitness under oath would be given eminent weight as evidence in this clause. It was decided in *Madhu Madhura Atha v State of Karnataka* that a witness may offer information either orally or in writing. A witness is generally considered independent unless collected through pressure, fraud, or deception. Anyone may testify in court, in Section 118⁸ of the **Indian Evidence Act 2015**, unless they are barred from doing so due to a **legal impairment**. Schizophrenics, for example, are unable to testify. Eyewitnesses are given more weight as a result of section 134[1]⁹ of the Indian Evidence Act. This provision states that no number of witnesses can be required by law to prove any fact. In a court of law, 1 observant could be sufficient to prove a matter. The **Supreme Court of India** has ruled that even conviction based on a **single witness** is possible.

IMPORTANCE OF EYEWITNESS UNDER INDIAN LAW

The portrayal of an eyewitness is crucial in the Indian legal system for the lawsuit process and the fairness of the judiciary. Essentially, eyewitnesses play an important role during the initial hearing, when the foundation of the complete case is laid out in front of the tribunal. All witness statements are recorded as evidence following section 164¹⁰ of the Cr.P.C. In a three-tier method, the statements are taken under oath and then examined in main, cross-examined, and re-examined by eyewitnesses. The Supreme Court examined the role of witnesses in the criminal justice system in the case of *Vikas Kumar Roorkeval v State of Uttarakhand & Ors.*¹¹ The court stated that witnesses are critical.

Several factors influence eyewitness evidence, diminishing its reliability. Eyewitness identification is substantially influenced by various elements:

⁷ Indian Evidence Act, 1872, s 3(1)

⁸ Indian Evidence Act, 1872, s 118

⁹ Indian Evidence Act, 1872, s 134(1)

¹⁰ Code of Criminal Procedure, 1973, s 164

¹¹ *Vikas Kumar Roorkeval v State of Uttarakhand & Ors.*, (2011) Transfer Petition (Criminal) No. 29/2008

1. If subjected to very tense circumstances at a site crime scene or in a criminal investigation.
2. Stress or fear caused by the presence of equipment at the crime site.
3. If offenders use a mask, wig, or another disguise.
4. Any racial inconsistency between the witness and the accused.
5. Limited witness observation time in the conduct of an offense or the verification process.
6. Witnesses' failure to observe

Absence of any distinguishing features of the suspect, such as tattoos, marks, and so on

UNRELIABILITY OF EYEWITNESS

Many factors influence eyewitness testimony. Despite its importance in the legal system, various factors can influence an eyewitness' view. As a result, eyewitnesses are untrustworthy.

1. *Concentrate on the weapon.*

Eyewitnesses are drawn to the **offender's weapon**. An onlooker at a crime scene is more interested in the accoutrements used in the scandal. This is the equipment held by the other person, size, colour, variety, or shape of the equipment pointing at him or the other victim. However, because of the weapon focus, the mind does not examine the specifics of the criminals. In general, a witness can recall all of the weapon's details but cannot recollect the actual model of the perpetrator.

2. *A high-stress environment*

He is under **extreme stress** at the scene of a crime, whether he is a victim or not. When we are stressed, our minds and bodies go into survival mode, and the person's thinking struggles for his or her survival rather than focusing on the offender. The ability of a person to observe accurately and recall an incident later is lowered in a stressful atmosphere. Because he is a victim, people can become numb, impairing their ability to observe.

3. Psychological trauma

Traumatic situations cause psychological shock in the victim and witness, reducing the accuracy of observation. Traumatic incidents like murder, rape, assault or robbery can cause shocks like mental trauma. **Mental trauma** has a significant impact on people's thinking, and the sufferer or witness may be unable to accurately monitor the real criminal who is doing the crime. Even if such eyewitnesses' testimony is catalogued, the correctness of such testimonies may be minimum.

4. Mind

Memory is stored in bits and pieces in the human brain. Even walking down, the roadside alleys, it is practically unfeasible for the human mind to remember every bit of the information. A fresh part of the factor is that hypermnesia begins to deteriorate over time. Memory fades over time and begins to disintegrate. When recalling, the brain frequently interprets the missing memory fragments, resulting in **incorrect identification and misinterpretation**.

5. Delay in India's justice delivery system

Delays in court proceedings are prevalent in India, and human memory deteriorates over time, diminishing the reliability of eyewitnesses. Human memory deteriorates over time, which might result in wrongful convictions. *Daya Singh v the State of Haryana*¹² is a case in point, in which the accused was apprehended in 1988. The accused, however, refused to participate in the identification parade, and as a result, the identification of witnesses took place 8 years later. A delay of this magnitude can result in a serious miscarriage of justice and the unreliability of eyewitnesses.

6. Identification procedure error

Failure to identify a suspect might also result in a miscarriage of justice. Misidentification may come from the witness's failure to observe due to blockage between the witness and the

¹² *Daya Singh v State of Haryana* (2001) Criminal Appeal No. 416/1998

perpetrator, or from the witness's difficulties in identifying the witness if numerous witnesses share a feature that the witness can recall.

SUGGESTIONS

Under the Indian legal system, eyewitness testimony is of crucial and utmost importance. The court frequently prefers eyewitness testimony in most criminal trials. Previously, there were **no particular legal provisions** for the admissibility of science and technology or forensic science findings under the **Indian Evidence Act, 1872, or the Code of Criminal Procedure of 1973**. When the disadvantages of eyewitness evidence were researched and measured, as well as assessing if science and technology can be used in court or forensic science can be used, forensic science gave a better evidential feature and demonstrative value. The Criminal Procedure Code (Amendment) Act of 2005 currently includes two sections that allow the examining officer, with the assistance of a healthcare practitioner, to collect a DNA sample from both the accused and the victim. However, this portion is primarily concerned with a medicinal evaluation in cases of carnal offences.

In today's era, **criminological or DNA reports aren't** held in high regard. The majority of the time, judges refuse its acceptance based on legal or constitutional prohibitions, and witness testimony is favoured instead. However, if forensic reports are given greater evidentiary weight alongside eyewitness testimony, the possibilities of false convictions are decreased and minimized to some extent.

CONCLUSION

Eyewitness testimony is crucial in the **trial process**. They play an important role in selecting the accused's nemesis in court. However, it is untrustworthy and capricious, frequently leading to false convictions. The **inadmissibility of rhetorical description in** non-bench of mandate cases drives the fate of the case up to the informant's testimony and other data of verification. When eyewitness testimony is tainted, innocent people are convicted. The court relies on eyewitness testimony taken under oath.

Cases that rely largely on eyewitness testimony are more likely to result in false convictions. Its disadvantage is the source of its failure in some cases. Forensic science and DNA reports are more reliable than **eyewitness testimony** because eyewitnesses are frequently mistaken, whereas forensics findings are less likely to be incorrect. Eyewitness statements might be unreliable due to causes like memory deterioration, heedlessness, **mental aghast, and trauma**, among others. This opens the door to false convictions. *A miscarriage of law and order occurs when an individual is mistakenly doomed, causing havoc in the legal system.*