

# Role of Judges in Prevention of Crime in India: A Critical Analysis

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## Abstract

Crime in India continues to increase, in fact it proliferates. Prevention of crime is an active approach utilizing preventive measures to deter criminals from committing crimes and reduce it. The main objectives of the Criminal Justice System are to prevent the occurrence of crimes and punish the transgressors and criminals. In an adversarial system of justice like India, the witness has a pivotal role in bringing the offender to justice thereby assisting the courts in punishing the offenders. Judges are adequately empowered to play an active role in the evidence collecting process to elicit truth under the existing laws and thereby to prevent crimes. But they play a passive role and seldom exercise those powers as no positive duty has been entrusted upon them to search for the truth and punish the guilty person. This paper highlights the increase of crime in India as a consequence of witnesses turning hostile in criminal trials and role of judges to deal with hostile witnesses in prevention of crime. It analyses the power of Judges under existing laws in India to tackle hostile witnesses during trial and to punish the guilty thereby deterring criminals from committing crimes. It also focuses on the need for effective legislation and suggests some practical measures in order to

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curb the hostility in witnesses.

## Introduction

The main objectives of the Criminal Justice System is to prevent the occurrence of crime, punish the transgressors and the criminals, compensating the victims as far as possible, maintain law and order in the society, deter the offenders from committing any criminal act in future and to make reformation for correction of the criminals. As rightly pointed out - 'prevention is the first imperative of justice.'<sup>1</sup>

It is also a moral principle that one who commits wrong must be punished so as to stop a criminal from committing crimes in future and to set an example that others who also commit crimes will be punished likewise. The successful working of Criminal Justice System can be determined by the rate of conviction of criminals i.e. percentage of cases which resulted in conviction of accused. Compelling witnesses to become hostile and getting acquitted by the Court on the ground of non-availability of evidence, is the easiest way for the accused to escape from his criminal liability. As a result of this, they would be encouraged to commit more heinous offences as they are no longer afraid of law and this situation will create a state of complete disorder in the society.<sup>2</sup>In the adversarial System in India, the witness has a pivotal role in bringing the offender to justice to achieve the objectives of the criminal justice system. The witnesses assist the court in determining the guilt of the accused. But, the problem of witnesses turning hostile has become a menace as it is the main cause of high acquittal rate of criminals involved in heinous crimes and if no measures is taken to prevent the witnesses from turning hostile then the society will lose their faith in justice delivery system and it will lead to chaotic situation. Hence, to curb this an effective legislation is needed in order to prevent the witnesses from

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<sup>1</sup>Security Council, *The rule of law and transitional justice in conflict and post-conflict societies*, S/2004/616

<sup>2</sup>Prof (Dr) Meenu Gupta & Prof (Dr) Bhavish Gupta, *Hostile Witnesses: Socio-Legal Impact on Justice Delivery System*, I AMITY INTERNATIONAL JOURNAL OF LAW AND MULTIDISCIPLINARY STUDIES ,31, 39 (2017)

turning hostile. The passive role of trial judges may encourage the criminals to commit crime fearlessly as they are no longer afraid of law. Thus, enactment of effective legislation to prevent the witnesses from turning hostile and imposing a positive duty upon the judges to search for the truth to punish the guilty is the need of the hour.

### **Effect of Witness Turning Hostile on Criminal Justice System in India**

The main objective of the criminal justice system is to prevent the occurrence of crimes, punish the transgressors and criminals and to render justice to the accused as well as to the victims and society at large. But one of the major problems with the justice delivery system in India today is the low rate of conviction even in serious crimes, which has arisen due to unavailability of evidence and hostile witnesses.<sup>3</sup> The growing trend of key witnesses turning hostile in criminal trials in heinous offences results in collapse of many cases and wrong acquittals which causes irreparable damage to the criminal justice system in India. Wrongful acquittal of guilty persons in criminal trials may lead to erosion of faith of the common man in the judiciary. Quality of justice suffers not only when an innocent person is punished but also when a guilty person is exonerated.<sup>4</sup> So, conviction of a guilty person is one of the most effective means of determining the efficacy of criminal justice. The quality or successful working of a criminal justice delivery system can be ascertained by the rate of conviction of criminals i.e. percentage of cases which resulted in conviction of accused.<sup>5</sup> One of the main reasons for the large percentage of acquittals in criminal cases is witnesses turning hostile and giving false testimony in cases. When the guilty go unpunished, the faith of a common man in the system is shaken and may lead to erosion of faith of the common man in the judiciary. But the trial

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<sup>3</sup>Brishketu Sharan Pandey, *Hostile Witnesses in Our Criminal Justice System*, (2005) *Cri.L.J.*, 17

<sup>4</sup>Malimath Committee on Reforms of Criminal Justice System, Govt. of India, Ministry of Home Affairs, I (2003) 13

<sup>5</sup>*Supra* note 2

judges willingly or unwillingly are not taking action against hostile witnesses.<sup>6</sup> The witnesses giving false evidence in court are not seriously dealt with by the judges. The present system of justice is more in favor of the accused than the victims<sup>7</sup> and it does not entrust any positive duty upon the judges to search for truth.<sup>8</sup> The most serious consequence of a witness turning hostile is seen in the cases resulting in acquittals.<sup>9</sup>

### **Consequences of witnesses turning hostile on Crime and Society**

When the witness turns hostile by retracting from his earlier statement, it affects the rate of crime which has a direct impact upon the society. The consequences of witnesses turning hostile on the Indian society can be discussed as under:

#### **A. Decline of Conviction Rate:**

Of late, the trend of witnesses turning hostile during trial of criminal offences is increasing. "Seriousness of perjury can be seen in the increasing trend of witnesses turning hostile, leading to acquittal of offenders in a large number of criminal proceedings."<sup>10</sup> According to National Crime Records Bureau (NCRB) data, in the past four decades, the rate of conviction in crimes committed under the Indian Penal Code has dropped miserably at an alarming rate. It is estimated that more than 60 percent of acquittals in the trials relating to heinous offences are as a

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<sup>6</sup>Viscount Simon in *Stirland vs. Director of Public Prosecutor*, 1944 (2) ALL ER 13

<sup>7</sup>*Supra* note 4. at 23-24,27

<sup>8</sup>*Id.* at 23-24

<sup>9</sup>Justice K..Sreedhar Rao, *Criminal Justice System-Required Reforms* 43 J.I.L.I 155,167 (2001);

Prof (Dr) G.S.Bajpai, *Witnesses in the Criminal Justice Process: A study of hostility and problems associated with witness*, CCCJA, N.L.I.U, Bhopal, 39 (2009)

<sup>10</sup>State (NCT of Delhi) Vs. Sidhartha Vashisht, Delhi High Court, In Re CrI. A. 193/2006 (decided on 22.05.2013)

result of the witness becoming hostile.<sup>11</sup> The report of National Crime Records Bureau (NCRB) says that conviction rate in cognizable crime (offences which fall under Indian penal code) has been falling gradually. In the year 1953 (when the National Crime Records Bureau first started collating data), the percentage rate of conviction to total cases tried was almost 64%.<sup>12</sup> In the next decade it improved to 65.71%.<sup>13</sup> However, 70's onwards, it has been consistently declining, dropping to less than 40% in 2012. According to the National Crime Records Bureau's Report of 2012, the conviction rate i.e. the ratio of cases convicted to the total cases tried, in the year 2012 was 38.5%<sup>14</sup> which was less as compared to 41.1% in the year 2011.<sup>15</sup> Now the conviction rate has slightly improved to 50%<sup>16</sup> in 2018 but the same is not satisfactory in comparison to earlier decades. According to a recent survey by the Directorate of Civil Rights Enforcement (DCRE), the main reasons for the low conviction rate are- Hostile witnesses (26%), Hostile victims (27%) and lack of abysmally low at 6.8%.<sup>17</sup>

The number of cases convicted and percentage of conviction in IPC cases by the courts in India for the first three decades since 1953 (1953-1973)<sup>18</sup> and last three years (2016-2018)<sup>19</sup> are shown in the table below:-

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<sup>11</sup> *Supra* note 9

<sup>12</sup> Crime in India 1953, NCRB, Ministry of Home Affairs, Appendix-I, 9; Appendix-IX, 2.

<sup>13</sup> Crime in India 1963, NCRB, Ministry of Home Affairs, Appendix-I, 33

<sup>14</sup> Crime in India 2012, Statistics, NCRB, MHA, Table-4.10, 358

<sup>15</sup> Crime in India 2011, Statistics, NCRB, MHA, Table-4.12, 362

<sup>16</sup> Crime in India 2018, Statistics Vol-III, NCRB, Ministry of Home Affairs, Table 18A.2, at 1100

<sup>17</sup> *Supra* note 9

<sup>18</sup> Crime in India 1953, 1963, 1973, National Crime Records Bureau, Ministry of Home Affairs.

<sup>19</sup> Crime in India 2016, 2017, 2018, Statistics, NCRB, Ministry of Home Affairs, Govt. of India.

Year	Total No. of cases for	No. of cases	No. of cases Convicted	Rate of conviction
1953	8,00,873	2,34,351	1,49,716	64.0
1963	8,28,798	2,30,371	1,51,473	65.7
1973	11,47,318	3,30,688	2,05,044	62.0
2016	1,11,07,472	12,74,348	5,96,078	46.77
2017	1,15,24,490	13,31,222	6,49,852	48.81
2018	1,21,06,309	12,77,011	6,38,955	50.04

**Table 1:** Conviction Rate in IPC Cases by Courts in India (1953-2018)<sup>20</sup>

Thus, the rate of conviction has declined in India for the period 1953 – 2018 from 64% to 50%. On the other hand the rate of conviction in West Bengal is very low i.e 13.4% in comparison to the national rate. Such decline in conviction rate may be due to the increasing rate of acquittal as a result or consequence of growing trend of witnesses turning hostile during the trial.

### **B. Increase of Crime:**

It is both a common perception and a reality that crime continues to increase in India, in fact it proliferates. The large number of acquittals in criminal trials results in tendencies to take law into one's own hands which erode the faith imposed on the judiciary by the common man. The

<sup>20</sup>Crime in India 1953, Appendix-I, IX, 9,20; Crime in India 1963, Appendix-I, 33; Crime in India 1973, Survey of Crime, Statistics, Disposal of cases by police and courts, p.67, Table 13-14; Crime in India 2016, Chapter 18A, Table 18A.2, 568-569; Crime in India 2017, Statistics, Vol-III, Chapter 18A, Table 18A.2, at 1097-1100; Crime in India 2018, Statistics, Vol-III, Chapter 18A, Table 18A.2, at 1097-1100; NCRB, Ministry of Home Affairs, Govt. of India.

number of incidence of crime and crime rate in IPC cases in the courts in India for first three decades since 1953 (1953-1973)<sup>21</sup> and last three years (2016-2018)<sup>22</sup> are shown in the tables below:

S l .	Head	1953	1963	1973	2016	2017	2018
1.	Incidence of	6019	6588	10771	29757	306257	3132954
		64	30	81	11	9	
2.	Crime	<b>166.7</b>	<b>143.5</b>	<b>187.0</b>	<b>233.6</b>	<b>237.7</b>	<b>236.7</b>

**Table 2:** Crime Rate in IPC Cases in India (1953-2018)<sup>23</sup>

Thus, the crime rate in India has also been increasing for the last few decades which may be due to a large number of acquittals on account of witnesses turning hostile and growing tendencies of common man to take law into their own hands losing faith in the judiciary.

### **C. Losing faith on judiciary:**

When the guilty persons are exonerated or innocent persons are convicted, the faith of the common man in the judiciary erodes. The large number of acquittals in criminal trials results in tendencies to take law into one's own hands which erode the faith imposed on the judiciary by the common man and thereby increases crime in the society.

<sup>21</sup> *Supra* note 18.

<sup>22</sup> *Supra* note 19.

<sup>23</sup> Crime in India 1953, General Situation in the country, 2; Appendix-I, 9; Crime in India 2016, Statistics, Table 1.2, at 4; Crime in India 2017, Statistics, Vol-I, Table 1.2, at 5; Crime in India 2018, Statistics, Vol-I, Table 1.2, at 5; NCRB, Ministry of Home Affairs, Govt. of India.

## **Role of Trial Judges in Prevention of Crime in India**

In the adversarial system of justice in India, the legislature has not imposed any positive duty upon the judges to search for the truth, find out the guilty and punish the transgressors and the criminals. But it is the moral principle that one who commits wrong must be punished so as to stop a criminal from committing crimes in future and to set an example that others who also commit crimes will be punished likewise. In a number of cases after conclusion of trial, it is found that cogent and corroborative evidence is not available in support of the prosecution case and the accused being found not guilty by the judge for committing the offence as alleged in the case, is acquitted of the charge. If the accused manages the witnesses to depose in the case in support of him or against the prosecution and if the material witnesses turned hostile, then the judge, in absence of sufficient evidence, compels to order for acquittal of accused without any attempt to discover the truth in the case. It is the easiest way for the accused to escape from his criminal liability by compelling or managing prosecution witnesses to turn hostile and getting acquitted by the judge on the ground of non-availability of evidence.<sup>24</sup>

In a number of cases including the heinous crimes, the parties settle the case out of court and consequently material witnesses do not support the prosecution case thereby assisting the accused to get acquittal from the court. Thus, in spite of the accused having committed the offence, he manages to get acquittal from the court. This easiest way of escaping from liability encourages the criminals to commit more heinous offences as they are no longer afraid of law and this situation will create a state of complete disorder in the society. Thus, it becomes difficult to prevent the occurrence of crimes, if the guilty are not punished according to law. Therefore, punishment of the criminals or offenders by the judges is essential for the prevention of crimes. In this context, the role of judges towards appropriate punishment of the guilty persons is crucial for prevention of crimes in India. In the adversarial system of justice in India, the Judge in his anxiety to demonstrate his neutrality opts to

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<sup>24</sup>*Supra* note 2.



remain passive.<sup>25</sup>

The passive role of trial judges may encourage the criminals to commit crime fearlessly as they are no longer afraid of law.<sup>26</sup> Though the Penal Code<sup>27</sup> imposes punishment of hostile witnesses for giving false evidence, it is seldom invoked by the judges.<sup>28</sup> A trial judge knows that the witness is telling a lie and is going back on his previous statement, yet he does not wish to punish him or even file a complaint against him.<sup>29</sup> Further when the investigation is perfunctory or ineffective, Judges seldom take any initiative to remedy the situation. During the trial, the judges do not bother if relevant evidence is not produced and plays a passive role as he has no duty to search for truth.<sup>30</sup> The judge in India acts like an umpire to see whether the prosecution has been able to prove the case beyond reasonable doubt and gives the benefit of doubt to the accused. He does not correct the aberrations in the investigation or in the matter of production of evidence before court.<sup>31</sup> He acts as a neutral arbitrator upholding the balance between the contending rivals without actively taking part in the forensic debate or participating in trial.<sup>32</sup> The judges also share the responsibility in deterring offenders from committing any criminal act in future and maintaining law and order in the society. It becomes pertinent that they find out the truth and convict the guilty so that the law serves the purpose of general and special deterrence. In this way, if the judges always search for the truth to find out the guilty and remain strict against the guilty for their appropriate

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<sup>25</sup>*Supra* note 4 at 29.

<sup>26</sup>*Supra* note 2 at 39

<sup>27</sup>Section 193, Indian Penal Code, 1860

<sup>28</sup>Sidhartha Vashisht @ Manu Sharma v. State (NCT of Delhi), (2010) 6 SCC 1; *See also*, Zahira Habibullah Shaikh v. State of Gujarat, AIR 2006 SC 1367.

<sup>29</sup>Swaran Singh v. State of Punjab, (2000)5 SCC 68.

<sup>30</sup>*Supra* note 4, at 27.

<sup>31</sup>*Id.* at 23-24.

<sup>32</sup>SriKrishna, B.N. *The Indian Legal System*, 36 INTERNATIONAL JOURNAL OF LEGAL INFORMATION 242 (2009)

punishment then the guilty as well as others may be stopped from committing any criminal act in future out of fear which will certainly prevent the occurrence of crimes in the society.

Now, in the process of searching the truth to find out the guilty, the judges are expected to actively participate in the trial questioning the witnesses to elicit the truth. The judges also need to take strict action against the vital witnesses turning hostile and supporting the guilty to punish them so that the witnesses do not give false evidence before the court in support of the guilty for his acquittal. Besides that the judges may also invoke their inquisitorial powers under Sec. 165 of the Evidence Act<sup>33</sup> to ask questions to the witnesses to discover the truth and also under Sec. 311 of the Criminal Procedure Code<sup>34</sup> to recall and re-examine any material witness who has turned hostile for the interest of justice. Thus, section 311<sup>35</sup> and Section 165<sup>36</sup> empowers the presiding judge to participate in the trial by playing an active role in the evidence collecting process whenever such exigency is occurred to unearth the truth.<sup>37</sup>

The judges in the criminal trial are not so active or dynamic in participation in the trial and the powers conferred on them under the existing laws to deal with hostile witnesses are seldom invoked by them. The trial judges willingly or unwillingly are not taking action against the hostile witnesses invoking their said power under the existing laws.<sup>38</sup> In the present system, the Judge in his anxiety to demonstrate his neutrality opts to remain passive.<sup>39</sup> Consequently it leads to an increase in the

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<sup>33</sup>The Indian Evidence Act, 1872

<sup>34</sup>The Code of Criminal Procedure, 1973

<sup>35</sup>*Id.*

<sup>36</sup>*Supra* note 33.

<sup>37</sup>M. Venkateswara Rao, *General Principles of Fair Trial*, 88-98,(2017) <https://districts.ecourts.gov.in/sites/default/files/1st%20Topic.pdf>

<sup>38</sup>Viscount Simon in *Stirland vs. Director of Public Prosecutor*, reported in 1944 (2) ALL ER 13

<sup>39</sup>*Supra* note, 4 at 29.

tendency of the people to take law in their hands and to commit crimes without fear. As a result, in the absence of prevention of occurrence of crime, the rate of crime is increasing day after day.

In a criminal trial a judge is required to find out the guilty persons who have committed the offence, convict and sentence him or to acquit the innocent after conclusion of the trial if he has not committed any offence in dispensing justice to the victims and society at large. In the course of findings at the time of delivery of judgment, a judge has to rely on the evidence of key or material witnesses to the case for reaching a conclusion and to deliver criminal justice. But in India huge numbers of material or key witnesses particularly in the cases involving heinous offences under Indian Penal Code are turning hostile and intentionally giving false evidence against the prosecution to support the accused to exonerate him from the charges. It results in wrong acquittals of guilty persons and causes increase in acquittal or decline in conviction.

Thus the trial judges in India can invoke the powers and use the tools under relevant provisions of law in dealing with hostile witnesses by playing an active or dynamic role during trial towards prevention of crime in the society. But they do not take action or invoke their said powers against the hostile witnesses. They seldom punish any hostile witness for giving false evidence in the court. As the adversarial system in India does not impose a positive duty on the judge to discover truth he plays a passive role<sup>40</sup> and opts to remain passive to demonstrate their neutrality<sup>41</sup> during the trial. But there is nothing wrong in his becoming active or dynamic during trial so that criminal justice being the end could be achieved.<sup>42</sup> Though the present system in India has not imposed any positive duty upon the judges to discover the truth and punish the offenders, a positively motivated judge is empowered to deal with the hostile witnesses and take strict action against them by using the said 'tools' under the existing laws. When a witness turns hostile, a judge in exercise of his said powers can actively participate in the trial, ask

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<sup>40</sup>*Supra* note 39.

<sup>41</sup>*Id.*

<sup>42</sup>State of Rajasthan vs. Ani alias Hanif & others (1997) 6 SCC 162

relevant questions to the said witnesses to elicit the truth, use material part of evidence of the hostile witness and take strict action against them or punish them for giving false evidence before the court in order to stop criminals from committing crimes and thereby to prevent the occurrence of crimes.

### **Indian Judiciary on Crime Prevention**

In prevention of the growing trend of crimes in India, the Apex Court plays a dynamic role in maintaining law and order in the society by punishing the offenders. It attempts to guide the trial courts to achieve the objectives of the criminal justice system in a society. The Supreme Court has expressed its serious concern in several judgments and have discussed the role of trial judges to deal with hostile witnesses. It has also criticized the passive role played by the Judges in the trial proceedings and emphasized on the importance of finding truth in several cases. The judiciary is always in favour of the pro-active role of the trial judges and dynamic approach of the courts in the criminal trial for establishment of truth in the society and achieving criminal justice at the end.

The Apex Court has further observed that the fate of the proceedings in a criminal case cannot always be left entirely in the hands of the parties, because crimes are public wrongs in breach and violation of public rights and duties, which affects the whole community and is harmful to the society in general. The trial courts have always been considered to have an overriding duty to maintain public confidence in the administration of justice, often referred to as the duty to vindicate and uphold the 'majesty of the law'.<sup>43</sup> It was observed by the Hon'ble Supreme Court that a Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. Both are public duties.<sup>44</sup> Justice cannot be made sterile on the plea that it is better to let a hundred guilty escape than punish an innocent. Letting the guilty escape is not doing justice

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<sup>43</sup>Krishna Mochi v. State of Bihar , Appeal(Crl) No. 761 of 2001 dated 15.04.2002

<sup>44</sup>Viscount Simon in *Stirland vs. Director of Public Prosecutor*, reported in 1944 (2) ALL ER 13

according to law.<sup>45</sup> It was observed by the Apex Court that, 'society suffers by wrong convictions and it equally suffers by wrong acquittals.'<sup>46</sup>

The Apex Court always put emphasis on active participation of the trial judges in the evidence collecting process to discover the truth. The higher courts have asked the trial judges in several cases to invoke their inquisitorial powers during trial to achieve criminal justice. The Apex Court has advised the trial judges to take strict action against the hostile witnesses and punish them for giving false evidence in the court. It also favours proactive role of judges in the trial to elicit the truth by invoking the inquisitorial power under the law of evidence<sup>47</sup> in order to achieve justice. Thus, the approach of Judiciary in India is always towards the active or dynamic role of the trial judges in dealing with hostile witnesses in the trial for prevention of crime and dispensation of justice to the society.

## Conclusion

Crime prevention, in whatever form it may take, is the proactive response to criminal activity with the primary goal being to address and prohibit the act before it takes place. It has many objectives but the main objective is to reduce and deter crime. The purpose of the Criminal Justice System is to deliver justice for all, by convicting and punishing the guilty and helping them to stop offending, while protecting the innocent. In our criminal justice delivery system the main objective of the judges is to punish the transgressors and criminals thereby to prevent the occurrence of crimes, maintain law and order in the society. A judge is required to punish the guilty as well as the hostile witnesses who support the guilty in order to establish faith on the common people thereby to prevent crime in the society.

Today, the main cause for the high acquittal rate in our criminal

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<sup>45</sup>Devender Pal Singh Vs. State of NCT of Delhi and Another, 2002 (5) SCC 234

<sup>46</sup>*Supra* note 43.

<sup>47</sup>*Supra* note 33, Section 165.

justice system is the passive role of judges in dealing with witnesses turning hostile. The witnesses assist the court in determining the guilt or otherwise of the accused. But, the problem of witnesses turning hostile has become a menace as it is the main cause of high acquittal rate of criminals involved in heinous crimes and if no measures is taken to prevent the witnesses from turning hostile then the society will lose their faith in justice delivery system and it will lead to chaotic situation. In order to curb this menace an effective legislation is needed in order to prevent the witnesses from turning hostile. Thus, enactment of effective legislation to prevent the witnesses from turning hostile and imposing a positive duty upon the judges to search for the truth to punish the guilty is the need of the hour.

In prevention of crime in India the judges should be active in participation and questioning witnesses during trial to establish the truth and they must take action against hostile witnesses for giving false evidence before the court. The Hon'ble Court emphasizes on exercise and invoking the vast and wide inquisitorial powers by the Presiding Judges conferred on them under Section 311 of the Criminal Procedure Code<sup>48</sup> and Section 165 of the Evidence Act.<sup>49</sup> The Apex court also put stress on the trial judges to elicit all necessary materials by playing an active role in the evidence collecting process in order to achieve criminal justice. By way of this approach, the Apex Court tries to balance the passive role played by the trial judges while dealing with hostile witnesses. This approach of the Supreme Court is an attempt to check and control the large percentage of acquittals of guilty persons due to hostile witnesses as well as the passive role played by the judges in the course of trial, which helps in prevention of crime.

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<sup>48</sup> *Supra* note 34.

<sup>49</sup> *Supra* note 33.