Securing Witnesses is Crucial

What is the issue?

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- 33 of the 49 witnesses examined by the prosecution recently in the Sohrabuddin Sheikh encounter have turned hostile.
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- In several sensational cases, prosecution has failed after witnesses turned hostile either due to either intimidation or allurement by the accused.
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What were some highprofile cases of witness backtracking?

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- In 2016, the Supreme Court had noted that witnesses turning hostile was become a common phenomenon.
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- A hostile witness is understood to be one who does not tell the truth at the request of the party on whose request he/she has been called to testify.
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- Over the last few years, an unusually large number of witnesses have turned hostile, including in cases relating to alleged Hindu rightwing extremism.
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- **Hindutva Intimidation -** Shorabuddin's case, saw multiple people have changed their statements in complete contradiction to their initial stand.
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- Similarly, in the - 2007 Mecca Masjid case, Ajmer Dargah and Samjhauta Express blasts cases, as many as 40 witnesses turned hostile.
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- Notably, this led to the aqquital of the prime accused, 'Swami Aseemanand'.
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- The 'best backery case', which was part of the plethora of the post Godhra Gujarat Riots cases is another classical example.
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- Witnesses had initially claimed that armed mobs shouting anti-Muslim slogans were involved in arson for multiple hours but retracted later.

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- Significantly, the apex court had slapped a 1 year prison term on one of the witnesses who retracterd for lying, and also ordered a retrial for 21 others.
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- **Other cases –** Actor Salman Khan had secured his acquittal in the 2002 hit-and-run case due to multiple witnesses changing their intitial statements.
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- Criminal-turned-politician Abhay Singh, was acquitted in the 1998 murder of Lucknow jail superintendent after all 36 witnesses turned hostile.
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- Convictions in the 1999 Jessica Lal murder case and the BMW hit-and-run case in New Delhi were possible manily due to witnesses turning hostile.
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How are witnesses treated in India?

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- Criminal cases are built upon the edifice of evidence that is admissible in law, for which witnesses are of paramount importance.
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- Yet, witnesses in India are treated shabbily with poor facilities, their allowances are delayed, and they also often face courtroom intimidation.
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- Lengthy trials frustrate them, and the threat of bodily harm looms large - all of which contributes to a witness turning hostile.
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- **Remadial options -** If a witness who was to prove is crucial has turned hostile, the concerned party may call other witnesses to counter the lie.
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- Else, the party may impeach the credit of the witness with the permission of the court by proving inconsistencies in his testimony.
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- Also, the witness may be cross-examined, and confronted with leading questions within the court room.
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- **Legality -** In criminal trials, intitial testimony of a witness who turned hostile

is not altogether rejected and the judge decides its reliability based on facts.

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- Hence, if a witness chooses to withdraw support, that would not result in the prosecution's case being thrown out completely.
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How has the Indian State progressed in this domain?

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- Various commissions had stressed the need for witness protection since independence and multiple judicial pronouncements have also been made.
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- Based on the recommendations of the Justice V S Malimath Committee Report (2003) and the 178th Law Commission (2001), The Criminal Law (Amendment) Bill, 2003 was proposed.
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- The Bill made it mandatory for police to record statements of witnesses before a judicial magistrate, although other protections granted were minimal.
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- The centre has expressed its inability to legislate on this domain as law and order is a state subject, but the Supreme Court has been convinced.
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- Sighting the example NIA Act, 2008, which also falls in the state domain, the Supreme Court has expressed its displeasure at the centre's attitude.
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Source: Indian Express

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