
INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH

**IMPORTANCE OF EXAMINATION OF WITNESS IN THE LAW
COURTS- DIFFERENT TYPES OF EXAMINATION WITH ITS PROS
AND CONS.**

-Avijit Singh¹

“Cross-examination, the rarest, the most useful, and the most difficult to be acquired of all the accomplishments of the advocate.... It has always been deemed the surest test of truth and a better security than the oath.”

- Cox

ABSTRACT

A witness is an individual who is called to testify in court in either civil or criminal proceedings. The examination of witnesses is an integral part of a criminal trial. The assessment of witnesses is a vital piece of a criminal trial. Witness declarations are one of the most solid proof on the grounds that the individual giving the statements has saw the act occur. Section 135–165 of the Evidence Act, 1872 deals with examination and cross-examination of witnesses. The examination of the witness by the adverse party is called cross-examination. Questioning should connect with the important realities of the case. In case, it need not be limited to the realities that were vouched for by the witness. The questions asked by the calling party resulting to the interrogation is referred to re-examination. Re-examination is mostly coordinated to clarification of issues that were raised during the interrogation. In the hearing of evidence, the Judicial officer has authority to determine which evidence is admissible.

Keywords- Cross-Examination, Witness, Evidence, Judicial officer, Indian Evidence Act, 1872, Statement.

¹ Student at Symbiosis Law School, Pune

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

INTRODUCTION

The art of cross examination is a skill that every lawyer should have or must acquire in his due course of practice. The procedure of cross examination is not only asking a set bunch of questions but it is undoubtedly much more than that. It is an art which requires years of practice to become perfect in it and to master it. Cross examination is a method used by the lawyers in the Court to acquire information relating to the case from the witnesses. Cross examination of a witness plays a vital role in the formation of the evidence regardless the nature of the case may it be civil may it be criminal. The admissibility of the examination is an important aspect of the case and whether it should be taken into account or not, is determined only by the judges of the court of law. The cross examination is in the form of questions and answers only where questions are put by the advocates and the answer is given by the witnesses only. The answers given by the witnesses must be relevant to the facts of the case. This paper will highlight the importance of cross examination of witness in the court of law.

CROSS EXAMINATION OF WITNESS

The cross examination of witness plays a crucial role during the examination of witnesses and it is termed as the most effective method of knowing the truth in the present case. The main purpose of cross examination of a witness is to check the authenticity and credibility of the witness in its testimony and statements given beforehand. Sometime a lawyer can ask additional questions which are not relevant to the facts of the case during the cross examination, but the admissibility of such questions is purely on the discretion of the judge. The principles of natural justice also recognises the right to cross examine a witness.²

Section 135 of the Indian Evidence Act, 1872 contains the provisions relating to the examination of a witness. The extract is as follows

“Order of production and examination of witnesses- The order in which witnesses are produced and examined shall be regulated by the law and practice for the time being relating to civil and criminal procedure respectively, and, in the absence of any such law, by the discretion of the Court.”³

²Diganth Raj Sehgal, How to establish the art of cross-examination, blogpleaders (November 28, 2021, 10:10 A.M.), <https://blog.ipleaders.in/establish-art-cross-examination/>.

³ Indian Evidence Act, 1872, Section 137 .

Examining a witness is important to know about the relevant facts of the case and it is done in the form of questions and answers and thus the answers are recorded in the form of evidence of the particular case. The witness is examined in three parts and section 138 of the Indian Evidence Act requires that the witness must be made answerable in the following parts-

- Firstly, the witness is examined by the party who called the witness on the stand, and this method is known as examination in chief under section 137 of the Indian Evidence Act.
- After the process of examination in chief is over, the another party can take over the questioning and can cross question the witness about his previous answers relating to the relevant facts of the case. The opposition can ask the witness questions which are not relevant but to examine the truthfulness of the witness. This method is known as the Cross-Examination as stated u/s 137 of the Act.
- If the party who called the witness at the initial stage is not satisfied with the answers of the witness and a need arises to examine the witness again after the process of cross examination the said party can examine the witness one more time and this process is known as re-examination as stated under section 137 of the Indian Evidence Act.⁴

PURPOSE OF CROSS-EXAMINATION

The process of cross examination is the most efficacious tool in the court of law to obtain the truth pertaining to the case. The purpose behind cross examining a witness is to check the credibility of the testimony made by the witness. The admissibility of the statement given by the witness is subject to the cross-examination done by the opposition party. The aim of the cross examination is to dishonour the credibility, precision and merit of the evidence given by the witness during the course of chief- examination. The process of cross examining a witness enables the party to have a glimpse of the material facts provided by the witness so that any inconsistencies can be revealed or any concealed information can be ascertained which can make the case strong.⁵

In **Prakash v. State of Maharashtra**⁶, it has been held that no scandalous question ought to be put except if there are sensible grounds to trust them to be valid.

⁴Dinesh Verma, Cross-examination & Principles of Cross-Examination, TaxGuru , (November 28, 2021, 10:10 A.M.)<https://taxguru.in/corporate-law/cross-examination-principles.html>.

⁵Prachishah, Leading questions, legalserviceindia, (November 28, 2021, 10:10 A.M.)<http://www.legalservicesindia.com/article/462/Leading-Questions.html> .

⁶Prakash v. State of Maharashtra ,1975 Cr.LJ. 1297 SC (India)

In common parlance, the main motive behind the cross-examination is to dishonour a witness or professional's credibility. International Tribunals have observed that an evidence of a cross-examined witness carries greater value than the evidence of a witness who is not cross-examined because it is a "*powerful tool for getting at the truth. The value of this method of ascertaining the truth lies in the personal contact between the witness, who has no idea of what questions may be asked him, and the personality of the advocate who puts the questions to him.*"⁷

In **Mohinder Singh v. State**⁸, it was held that a preliminary appointed authority will not allow questions which are outrageous, vexatious or even those cranky, which inspire insignificant or unacceptable replies, or even those which don't propel the preliminary, however are determined to obstruct or defer in progress.

Additionally, the method of cross-examination helps to obtain information that is not provided by the witness in its statement. This process also allows the witness to remove the vagueness in its statement and to check whether the facts provided by the witness is relevant to the case and to reveal any contradictions if any.

PROS AND CONS

The process of cross-examination is of compelling nature, it gives the lawyer a chance, by the medium of questions, to pivot the Court's observation towards the relevant contentions of the Case in hand and the efforts are made to know the key evidence that can assist in the proceedings. Leading questions are one of the finest way to be rhetorical.⁹ It is a way of questioning in which question itself hints the answers to it. It is on the discretion of the Court to give weight such line of questioning.¹⁰

In the case of **Ghulam Rasool Khan v. Wali Khan**¹¹, it was held by the Jammu and Kashmir High Court that- cross-examination probably won't be vital if the witness declaration is *prima facie* impermissible.

⁷Claudio Matute, Cross-examination, Jus Mundi, (November 28, 2021, 10:10 A.M.)<https://jusmundi.com/en/document/wiki/en-cross-examination>.

⁸Mohinder Singh v. State, ILR 1970(2) Del 854(India).

⁹*Supra* note 4.

¹⁰*Supra* note 3.

¹¹Ghulam Rasool Khan v. Wali Khan , AIR 1983 J K 54 (India).

It can be said that if the witness does not answer any relevant facts or there is no trustworthiness of his statements, his declaration can be dismissed and there is no requirement for the cross-examination.

Nonetheless, the advantages of the cross-examination might demand for excessive information and credibility risks than in administration where the oral testimonies given by the witnesses doesn't substitute statements. The another advantage of summoning a witness for cross-examination is that the name of witness which is recorded on the statements is likely to be remembered by the Court. Which further gives the Court a way to determine their credibility and to look for information in their own questions. Briefly, it provides a platform to the opposing witness.¹²

In the case of **Mohammad Mian v. Emperor**¹³, it was held that these questions may possibly be permitted assuming they are connected to the case and are regarding to a pertinent reality in issue, or fundamental for finding out whether some reality in issue exists.

In **Varkey Joseph v. State of Kerela**¹⁴ it was held by the Supreme Court that the examiner should not to be permitted to outline questions in such a way, which the witness might reply in 'yes' or 'no' so as to empower him to give such answers, which he expects or wants.

In some situations, the witness won't approach to give an evidence except if he is guaranteed of protection or is ensured obscurity of some type of actual disguise. To overcome this situation, in camera proceedings might be adequate to protect the engrossment of the witness. The court also need to take such necessary measures to keep the identification of the witness as a secret and should take necessary precautions so that his right to cross-examine is not affected. In the court when the case is dismissed, the witnesses are not paid the stipends. The Steps ought to be taken in this manner to guarantee that the witness are paid stipends around the same time as the case is dismissed.¹⁵

The next thing is how the witness should be treated during a trial. The witness is qualified to be treated with kindness when he shows up for cross-examination. Similarly, due kindness is ought to be given to the witness when he enters the court for giving an evidence. The attorney for the defence to exhibit that the witness isn't honest or reliable person should stop asking

¹²Kavya H, Examination of Witness- An overview, Lexauxilium, <https://lexauxilium.com/2020/11/24/examination-of-witnesses-an-overview/>.

¹³Mohammad Mian v. Emperor 52 Ind Cas 54.

¹⁴Varkey Joseph v. State of Kerela , AIR 1993 SC 1892(India).

¹⁵Importance of Witness, lawteacher, (November 28, 2021, 10:10 A.M.)<https://www.lawteacher.net/free-law-essays/administrative-law/importance-of-a-witness-law-essays.php>.

questions which are not relevant to the case and questions the dignity of the witness. When the questions asked by the defence starts to question the dignity of the witness, the Judge should object such questions.¹⁶

In the United Kingdom, the judgment in the case of R v. Murphy (1989) it was held that the character of the witness ought to be kept mystery not only from the accused but also from the defence.

In Australia, the Supreme Court of Victoria endorsed of non-exposure of the names and addresses of sources and as well as other witnesses whose individual security would be jeopardized by the revelation of their identity.

The US Courts have held that the constitutional protection in favour of the right to showdown by way of cross examination, isn't outright and could be confined to ensure protection of witness identity by utilizing video connect or by protecting the witness from the accused.

CONCLUSION

An efficient and sophisticated methodology towards the examination of witness gives clear picture to the case and improves the justice delivery framework. Examination of witness is vital for any case whether the case is civil or criminal. Section 135 to Section 166 of Indian Evidence Act clarifies the examination of witness where the act covers every aspect of the questioning for example who would first examine the witness during the trial and what are the pertinent facts that are acknowledged during the course of examination and what the defence can ask in cross-examination of the witness.

It can be determined that the area covering the aspect of cross examination is exceptionally huge. In this paper it has been tried to outline the components of a decent cross-examination and the guidelines mentioned are not exhaustive. Witnesses by way of providing the courts with evidence assists them to give justice to the wrongdoer and come at the right judgement. Steadily training and practice is the best way to acquire dominance over the art of cross examination.

¹⁶*Supra note 3.*