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Analysis of the Statutory Mandates on Examination and Cross-Examination of Witnesses

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ABSTRACT

Witness is the one who have seen a particular act and willing to convey the same as testimony. The testimony is given under an oath and deposition either in oral or written and also by affidavit. The examination of witness is a crucial part where it decides the originality of the case. The Indian Evidence Act, Section 135 deals with cross-examination of witnesses who are present. Further the rights and protection of the witness are equally important. Hence various rights and scheme have been imposed by the government to protect the witness. The examination and cross examination of witness is having certain limitations in which the witness shall be examined. There are various pronouncements and cases in which the witness shall be protected by proving equal rights. In this paper the researcher will analyse the clauses and section classified under different laws. Also, the researcher would analyse the rights been given to the witness and effectiveness of the witness protection scheme.

Keywords: Examination, Cross examination, Witness, Witness protection scheme.

I. INTRODUCTION

In Courts, the term "cross examination" is frequently used. The cross examination of a witness and examination is regarded a crucial aspect in a trial of a Sessions case, a Criminal Case, Civil matters, Motor Vehicles Claims Cases, and several other cases. Handling the case during cross questioning of a witness is the true test for a trial judge. The method for recording the testimony of a witness in chief in civil trials has been simplified thanks to a change in the Code of Civil Procedure. The scope of recording

the evidence in chief was allowed to be done by affidavit after a modification in 2002. As a result of the submission of evidence affidavits, the long-term consumption of Civil Courts was significantly decreased. However, this has allowed the deponent to go into great detail about his argument. As a result, the affidavit might be several pages long, which is common in many circumstances. As a matter of course, the defendant/respondent takes up every word of the affidavit and conducts a thorough cross

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examination.²It has also been the norm to segment the evidence during cross examination. The main concern with this type of piecemeal cross practise is the recurrence of the same questions at the expense of the Court's time. As a result, the Presiding Officer of the Court must be extremely watchful and capable of establishing the same. Cross examinations are sometimes one of the reasons for trial delays; the deponent's incompetence or illness makes him/her difficult to retain for lengthy periods of time, resulting in requesting postponement at a specific level of cross examination, resulting in piecemeal trial.³The Presiding Officer is once again challenged to determine if the deponent is truly unwell or is seeking to prolong the proceedings. There are no pleadings in Sessions/Criminal Cases, thus cross examination cannot be limited to a certain defence. As a result, the accused makes the most of all defences that he or she believes are available to him or her.⁴ The Sections 135 to 165 of the Evidence Act, 1872 deals with the examination and cross examination of witnesses. And the researcher in this research paper establishes the actual happening truth during cross examination and its legislative mandates which are necessarily to be followed under the Indian Evidence Act, 1872 and Civil Procedural Code, 1908 Further the researcher has attempted to analyse the

importance of cross-examination and the factors affecting the Justice Delivery System.

II. EXAMINATION OF WITNESS

Under **Section 135** of **Indian Evidence Act**⁵, grants the court the authority to require or order the witness's production. Examining a witness entails asking the witness questions about the case's pertinent facts and documenting the witness's answers as evidence. The examination of witnesses has three sections, according to **Section 138** of the Indian Evidence Act⁶ says that perhaps the witness must be examined in the sequence listed below:

- Firstly, a party who summoned the individual examines him; this is referred to as examination-in-chief in **Section 137** of the Evidence Act.⁷
- If the party who summoned the witness believes it is necessary to re-examine the witness following cross-examination, they may do so. Section 137 of the Indian Evidence Act, 1872, defines this as re-examination.

In the case of Ghulam Rasool Khan V. Wali Khan⁸, it was concluded by the court of Jammu and Kashmir that the cross-examination may not be required if the witness evidence is prima facie untrustworthy. So, if the witness fails to respond to pertinent facts or if his remarks lack

²A.K.A. Rahmaan, The Cross Examination and Role of Courts, (Nov.24, 2021, 7.24 AM) <http://www.tnsja.tn.gov.in/article/08%20A%20K%20A%20Rahmaan%20THE%20CROSS%20EXAMINATION%20AND%20ROLE%20OF%20COURTS%20corrected.pdf>

³*Id.*,

⁴Rahmaan Supra Note 1

⁵The Indian Evidence Act, 1872, § 135, No. 1, Acts of Parliament, 1949 (India).

⁶The Indian Evidence Act, 1872, § 138, No. 1, Acts of Parliament, 1949 (India)

⁷The Indian Evidence Act, 1872, § 13, No. 1, Acts of Parliament, 1949 (India)

⁸Ghulam Rasool Khan v. Wali Khan, AIR 1983 J K 54.

credibility, his evidence might be dismissed, and cross-examination is not required. The examination of a witness must be conducted in the order specified in Section 138. In the case of Sharadamma V. Renchamma⁹, It was decided that the primary examination must take place before the cross-examination. The inverse is neither feasible nor acceptable.

III. PRINCIPLES OF CROSS-EXAMINATION

The scriptural basis for cross-examination: -

The process of cross-examination for obtaining truth is as ancient as human nature. Cross-examination is widely regarded as the most difficult test of an advocate's abilities, and it may need more inventiveness than any other aspect of his job.¹⁰ Conducting cross-examination with a high level of competence is quite tough. It is undeniably a true intellectual attempt and it is a direct confrontation of mind with mind. It necessitates not only a wealth of knowledge of the human mind, its intellectual capacity, and their modes of operation, which can be learned only through reading, reflection, and observation, but also a great deal of experience of a man and his motives derived from interactions with various courses and many people, and, above all, a certain experience in the field in the art of having dealt with witnesses.¹¹ In addition, any party with a right to participate in

any investigation or trial can cross-examine the witness or witness. In B.S. Balaji vs. T. Govindaraju,¹² It was argued that if one of a firm's Managing Directors borrowed money on the firm's behalf without the approval of the other Managing Director, the latter, as an aggrieved person, had the ability to cross-examine the latter.

Object of cross-examination:

The goal of cross-examination is to obtain something, no matter how insignificant, that will aid the case. When you can't find something that will aid your customer, attempt to find anything that will weaken 'your opponent,' but that requires a different method. To distinguish between truth and lies, especially if the truth given by an opposing witness might help your case.¹³

Range of Cross-Examination

Cross-examination can go in any direction, with the only constraint being that it must relate to important and relevant facts. According to **Section 146 to 150 of Indian Evidence Act**¹⁴, The legislature has attempted to grant cross-examination broad powers in order to aid him in determining the truth in oral depositions presented to the court. According to Section 132 of the Evidence Act, a witness cannot be excused from answering a question if the response might criminalise him or result in a penalty or forfeiture

⁹Sharadamma v. Renchamma, AIR 2007 Kant 17.

¹⁰Tsoukalas, I. Theory of Mind: Towards an Evolutionary Theory. *Evolutionary Psychological Science* 4, 38–66 (2018). (Nov.26, 2021, 2.24 PM) <https://doi.org/10.1007/s40806-017-0112-x>

¹¹Id.,

¹²B.S. Balaji vs. T. Govindaraju, 1966 AIHC 2484

¹³Francis Wellman, The Art of Cross-Examination, (Nov.27, 2021, 8.38 PM) <http://delhihighcourt.nic.in/library/articles/the%20art%20of%20cross%20examination%5B1%5D.pdf>

¹⁴The Indian Evidence Act, 1872, § 146 to 150, No. 1, Acts of Parliament, 1949 (India).

if the inquiry is about a material issue in the case. And, according to the proviso to the provision, no such answer can lead to his arrest or prosecution, or be used against him in any criminal case. Apart from being prosecuted for making false claims, he is also facing criminal charges. However, under Section 148 of the Act, the court has the power to decide whether or not a witness should be compelled to answer. The witness is protected from hostile cross-examination under this provision. Further, he is not bound to respond to queries that are damaging to his reputation and cast doubt on his veracity.

In *Bombay Cotton Manufacturing Co. v. R.B. Motilal Shivlal*¹⁵, It was pointed out that such queries pertain to significant facts and are solely relevant to the question of whether or not the witness should be trusted. It is critical to respond to such queries in circumstances when the decision is completely based on oral evidence. And the court will assess whether or not a witness may be convicted based on his comments if he is forced to answer questions that criminalise him in any manner. The legislation has provided him protection.¹⁶The comments made during cross examination that are earlier statements made throughout the investigation can aid him in using those statements in the case as they were collected. However, the statement on which the witness is challenged must be pertinent to the

subject at hand.¹⁷The purpose of cross questioning should be to verify the honesty of the witness, not to inquire about the victim's moral character or past sexual history with anybody.¹⁸The subject matter and the relevant fact in issue, or questions that are required for determining whether a fact in dispute exists, must be included in the questions.¹⁹

Questions by a party to his own witness and corroboration of evidence

Section 154 of the Evidence Act permits a party who calls a witness to interrogate their own witness as if they were cross-examining him. A witness can become hostile at any time, and it is important for the party who summoned the witness to cross-examine him if this happens. When a party summons a hostile witness, he is defined as someone who refuses to disclose the truth.²⁰There must also be sufficient evidence to indicate that the witness is lying and has become hostile.²¹Obtaining all of the essential information from a witness may not always be as simple as asking the most important fact. Some inquiries that don't appear to be directly related to the relevant information might be asked if they assist confirm the fact. Section 156 permits parties to beat about the bush a little with the Court's consent in order to connect the dots and establish the important fact in dispute. In the case of *Rameshwar v. State of Rajasthan*²², a little girl had been raped and had informed her mother of

¹⁵*Bombay Cotton Manufacturing Co. v. R.B. Motilal Shivlal*, (1915) 17 BOMLR 484

¹⁶Prachishah, Leading questions, (Nov.29, 2021, 9.52 PM)

<http://www.legalservicesindia.com/article/462/Leading-Questions.html>

¹⁷*PurshottamJethanand v. The State Of Kutch*, AIR

1954 SC 700

¹⁸*Id.*,

¹⁹*Mahomed Azam vs Emperor*, AIR 1926 Bom 178

²⁰*Sat Paul v. Delhi Administration*, AIR 1976 SC 294

²¹*Atul Bora v. Akan Bora*, AIR 2007 Gau 51

²²*Rameshwar v. State of Rajasthan*, 1952 AIR 54

the incident. Later, the girl's testimony to her mother was supported by her other comments in order to prove the case.

IV. EFFECTIVENESS OF WITNESS PROTECTION SCHEME:

The free trial and its rights has long been acknowledged as the important factor of criminal law and one of the most fundamental aspects of good governance. According to the Supreme Court, "denial of a fair trial" constitutes "human rights crucifixion." Article 21 of the Indian Constitution recognises the right to a fair trial as one of the essential rights. It has also been recognised that denying a fair trial is tantamount to denying human rights. In *Zahira Habibullah Sheikh & Anr. v. State of Gujarat & Ors.*,²³ the court said that the threatening of witnesses and submitting the false evidence will not be termed as a free trial.

The Indian judiciary has often highlighted the need of witness protection.²⁴ In *National Human Rights Commission v. State of Gujarat and Ors.*²⁵, The Supreme Court dutifully recognised the necessity of witness protection and emphasised the state's involvement in this respect. In *Rajubhai Dhamirbhai Baria and Ors. v. The State of Gujarat and Ors.*²⁶ The court emphasised the importance of the state's involvement in developing a system to safeguard witnesses in sensitive cases. Directions were particularly provided to the States in a hearing before the

Hon'ble Apex Court, indicating the procedures taken/to be done for witness protection. Simultaneously, the (then) learned Attorney General of India was asked to provide his recommendations in the shape of a draught plan. The "Witness Protection Scheme, 2018" ("Scheme") was finalised by the Central Government, in cooperation with the National Legal Services Authority, in response to this and based on the proposals of many States/Union Territories. Following that, the Hon'ble Court underlined in its verdict the critical need of having a witness protection mechanism/scheme in India.²⁷ In extreme cases, the 2018 Witness Protection Scheme outlines methods for safeguarding the safety of witnesses in a variety of situations, including providing a police escort to the courtroom or using audio video means for recording testimony of such witnesses.

Lacunae in Witness protection scheme, 2018:

Though the 2018 Witness Safety Scheme is a positive step forward in terms of witness protection, it is not without problems. To begin with, the protection granted is just for a three-month term at a time. Second, it appears that advice supplied by concerned police officials, who are frequently prone to corruption and political pressures. And other considerations, form the basis of orders that may be granted under the Scheme. Furthermore, while the Scheme mandates confidentiality and the preservation of records, it makes no provision for

²³*Zahira Habibullah Sheikh & Anr. v. State of Gujarat & Ors.*, (2006) 3 SCC 374

²⁴*People's Union for Civil Liberties v. Union of India*, (2004) 9 SCC 580

²⁵*National Human Rights Commission v. State of*

Gujarat and Ors., MANU/SC/0713/2009

²⁶*Rajubhai Dhamirbhai Baria and Ors. v. The State of Gujarat and Ors.*, MANU/MH/1415/2012.

²⁷*Mahender Chawla v. Union of India*, (2019) 14 SCC 615

sanctions in the event of such violations. The Scheme also makes no provision for the witnesses' occupation, labour, or education in the meantime. The Witness Protection Bill, 2015, on the other hand, included specific provisions regarding the penalties that may be imposed for violating the terms of the said Bill; orders for the protectee's safety and security from the beginning of the investigation until the stage after trial on terms as warranted by the Court based on the threat perception of the individual, and so on.²⁸In reality, the stated Bill had specific provisions relating to the protectee's right to engage in a different vocation without jeopardising the case's integrity or the juvenile protectee's education, which were absent from the Scheme. A similar bill to protect the identity of witnesses has been tabled in Parliament.²⁹Unfortunately, neither of the aforementioned Bills were able to become law. India has undoubtedly gone a long way in terms of safeguarding the protection and security of witnesses, who are an important element of the criminal justice system. In the absence of a statutory framework with severe penalties, the entire mechanism may be implemented through the legal system.³⁰

V. CONCLUSION

The Indian Evidence Act of 1872 is essential for safeguarding witnesses and allowing them to talk freely without fear of being prosecuted. Also, the Indian evidence act gives or prescribes the way in which the witnesses should be examined and cross examined. Legal interpretations have

resulted in considerable beneficial revisions to this legislation, allowing it to better match the demands of the moment and making certain clauses more practical. Further the witness protection scheme has a wide range of capability in protecting the witness during the examination and cross examination but the lacunae shall be eradicated in the scheme. Therefore, the researcher would conclude by saying that the witness has to be examined in an elegant way by not curtailing the dignity of the person.

²⁸The Witness (Protection of Identity) Bill, 2015

²⁹Id.,

³⁰*Neelam Katara v. Union of India*, ILR (2003) 2 Del 377