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EXAMINATION OF A WITNESS WITH SPECIAL REFERENCE TO CROSS-EXAMINATION

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Abstract

One of the most important aspects of the adversarial system of law is the witness cross-examination, since the establishment of facts by the judiciary largely depends on oral testimony. The Indian Evidence Act 1872 provides a methodological way of investigating the witnesses that comprises examination-in-chief, cross-examination and re-examination, which has a procedural and substantive aim. Of them, such a powerful weapon as cross-examination will assume one of the leading positions among the means of checking the veracity, credibility, and reliability of the witness testimony. It is not merely a procedural formality but rather a very important protection mechanism to bring about fairness in the course of trial and to monitor natural justice principles.

This research paper is critically carried out to look at the concept, scope, objective, and limitations of witness examination with particular reference to cross-examination in the Indian law. It examines provisions of the law, judicial interpretations, and evidentiary principles of leading questions, impeachment of credit, hostile witnesses, and protective restrictions of indecent or scandalous questioning. The paper also examines the constitutional aspect of the cross-examination, especially in connection with the right to fair trial in Article 21 of the Constitution of India.

Other challenges, like the hostility of witnesses, intimidation, abuse of aggressive cross-examination tactics, and how digital modes of testimony are applied, are also discussed in the paper. The paper also uses the analysis of doctrines and allusions to significant judicial precedents to reveal the fine line between the right of the accused to confrontations and the necessity to respect the dignity and safety of the witnesses. It ends by proposing reforms to enhance procedural protections without the cross-examination role of the justice system by enhancing the truth-seeking.

Keywords: Examination of Witness, Cross-Examination, Indian Evidence Act, Fair Trial, Witness

Introduction

In the process of dispensing justice in the adversarial system, the quality and credibility of witness testifications are a significant pillar. In systems like India, where the adversarial system dominates, the onus to establish the facts rests mostly on the parties, and the role of the court is to remain a dispassionate judge. Witnesses in

this structure are the breathing tools of bringing facts to court. Documentary evidence can prove some facts of a conflict, but it is verbal evidence that tends to give life to disputed facts, explain things, and help the court to recreate the events. The credibility of the eyewitness testimony is, therefore, a direct determinant of the result of civil as well as

criminal cases. In the Indian law system used to question witnesses, especially in the Indian Evidence Act, 1872, and the Code of Criminal Procedure, oral evidence is central to the system, so much so that justice is not administered in a manner that is merely procedural but substantive.

The principle of fair trial cannot be disconnected with so correct investigation of witnesses. The principles of fair trial have a very strong foundation in the larger teaching of natural justice, particularly the rule of *audi alteram partem*, that no human being should be found guilty without having a hearing. The guarantee of the right to stand up and interrogate the negative witnesses constitutes a critical part. In the case of a criminal, the ability of the accused to cross-examine the prosecution witnesses has been regarded as a basic right to the protection of personal freedom and stave off trial miscarriage. Likewise, cross-examination in civil litigation guarantees that claims and defence is debated before they are determined in court. The legal system gives a systematic way of checking the truth, uniformity, and reliability of the testimony through examination-in-chief, cross-examination, and re-examination. The art of cross-examination, more specifically, is a potent instrument of finding the truth, revealing falsehood, making ambiguous issues clearer, and questioning contradictions. It has been termed as the best way of questioning the integrity of the evidence in litigation proceedings.

Although it is important, witness examination is not a problem-free process. Witness testimony has constantly been a matter of concern in regard to its reliability and credibility in the court of law. The human memory is not infallible; perception can be affected by stress or prejudice, and the memory can be lost over time. In most instances, witnesses become hostile, either withdrawing their previous statements or even opposing them. Hostile witnesses have become a major challenge to successful prosecution, especially in criminal

cases that involve serious crimes. The integrity of the testimony is often compromised by witness intimidation, coercion, inducement, and social pressure. Meanwhile, the process of cross-examination can also be abused as a source of harassment, humiliation, or delay. Violent or offensive interrogation, particularly when the witness is a vulnerable one, can intimidate people to give real evidence and may even keep the victims out of the courtroom. Therefore, cross-examination is a necessary protection of the accused, but can be abused and therefore affect the dignity and safety of witnesses.

The law system is thus placed in a very difficult situation where they have to strike a balance between two conflicting requirements, which are: the pursuit of truth by means of strict scrutiny of evidence and the endeavour of ensuring that the witnesses are not intimidated or abused. By ensuring that the cross-examination is not carried out in the form of character assassination or unnecessary embarrassment, courts need to make sure that it is limited to relevant facts and credibility. This is evidenced by the changing jurisprudence on witness protection, procedural fairness and judicial control over trial proceedings. The necessity to balance the rights of the defendant and the rights and safety of the witnesses has become more pressing due to the increasing cases of the hostility of witnesses and the manipulation of trials.

In this regard, the given research aims at analysing the legal framework of the examination of witnesses in India. It will examine the statutory clauses which govern examination-in-chief, cross-examination, and re-examination and seek to know what these terms mean in practice in civil and criminal proceedings. The paper also aims to examine the extent and the purpose of cross-examination, such as its value as evidence and its use in testing credibility. The interpretation of the right to cross-examination by the judiciary is an important element of this question because, over the years, courts have been able

to define the scope of the right and its restrictions via precedent. The other goal of this study is to analyse the measures in place to allow the cross-examination not to be abused, as well as prevent the undue harassment, intimidation, or manipulation of witnesses.

In its practical and doctrinal complexity, witness examination leads to the research being driven by certain questions. What are the procedures that are followed in the examination of a witness under Indian law, and how do the procedures work in practice? What is the relative admissibility and reliability of statements that are examined by cross-examination, and what does the lack of cross-examination entail? What does the law prohibit in the cross-examination to avoid abuse? Lastly, how are courts able to balance the right of the accused to confront witnesses and the necessity to protect witnesses and treat them fairly?

To answer these questions, the research uses doctrinal research methodology. It is based mostly on the interpretation of statutory legislation, judicial rulings and authoritative commentaries on the law of evidence and criminal procedure. The applicable case law is analysed to get insight into how the courts have applied and interpreted the principles involved in witness examination. A comparative approach can also be taken, where desired, as a way of emphasising how other adversarial jurisdictions deal with cross-examination and witness protection. By critically examining the law and court decisions, this study aims to add to the subtlety of the analysis of witness examination and the dynamic aspect concerning the pursuit of truth and justice on one hand, with the issue of fairness on the other.

Concept and Meaning of Witness

The notion of a witness plays the key role in the process of justice administration because the adjudication process is based directly on the evidence presentation and assessment. A witness is generally considered to be an individual who testifies before a court or other

body of authority on things that he or she knows. The term is inclusive of people who have firsthand heard or seen something, and those who perhaps could provide evidence to opinion depending on expertise. The concept of a witness has not been exhaustively defined under the Indian Evidence Act in a single section, but it is construed as a composite of sections regarding oral evidence, competency and examination. A witness refers to an individual who provides evidence during a court of law, either in the form of furnishing documents or by making oath-bound statements. The Act underlines that evidence should be direct, i.e., the witness should be able to testify to facts that he or she was witnessing, hearing, or any other form of perception.

The issue of the persons who can provide testimony is solved with the principle of competency. In Section 118 of the Evidence Act the general rule is that all persons are competent to testify unless the court thinks them too young, or very old, diseased in mind or body or in any other cause to give rational answers to questions put to them. This provision is a very wide and inclusive version; hence, competency becomes the rule and disqualification the exception. On the other hand, compellability is a trait to indicate whether a competent witness can be forced by the law to provide his/her testimony. Even though the majority of competent witnesses can be compelled, there are classes of witnesses to which compulsion is prohibited, including spouses under certain conditions and those safeguarded by privilege. Competency, therefore, decides on who can testify, and compellability answers the question of who can be compelled to testify.

There are various categories in which witnesses can be categorised depending on the type of testimony. An eyewitness refers to a person who personally sees the happening of an incident by his or her own senses, especially sight. This kind of testimony has been deemed very probative since it is associated with primary facts. Nevertheless, courts are still careful as they can

make a mistake, be prejudiced or even identify a wrong person. An expert witness, on the other hand, is opinion evidence through the application of specialised knowledge, skill or experience in areas like medicine, forensics, handwriting analysis or science. The issue of admissibility of expert testimony is based on the fact that there are issues that are to be handled in a technical manner that cannot be understood by ordinary individuals. The expert evidence is valuable not only because of the qualifications but also because of the rationality of the rationale behind the opinion.

Another category is the child witness. The law does not represent a certain minimum age to be able to be called competent, but rather the ability to comprehend questions and give logical responses. A preliminary examination is usually carried out by the courts to determine whether the child is intelligent and comprehending enough. With satisfaction, the evidence of a child witness may be sufficient to lead to a conviction, but discretion may frequently require corroboration. The acknowledgement of child witnesses is indicative of the fact that more often than not, crimes take place in a household or a home-like environment where children may be the sole witnesses.

The phrase hostile witness is a witness who reneges or opposes what he was saying or has demonstrated an unwillingness to testify as requested by the party that invited him. If a witness is found to be hostile, the party invoking him has the right to cross-examine him at will under the court's authority. The evidence of a hostile witness is not simply negated, but the court can admit those parts that seem to be reasonable and fulfil the testimony of other evidence. This strategy provides flexibility, and it also prevents miscarriage of justice because of partial unreliability.

Interested witnesses are attendees who are personally interested in the course of the case, e.g., the family of the murdered, or individuals directly interested in the conflict. The fact that

they have an interest in the result does not automatically make their testimony inadmissible, but rather the courts are evaluated on how to be vigilant on their testimony as it may be biased⁸⁸. The witnesses who are known as chance witnesses are those who were simply at the place of the event without any visible cause or any connection. Although this presence can be considered as a form of suspicion, this does not imply that their evidence can be inadmissible; the court is only required to determine whether their reason to be present is natural and believable.

Some other problems associated with privilege and special rules on testimony are also discussed in the Evidence Act. The following sections, 118–134, are all concerned with the competency, the number of witnesses and some other issues. Section 134 is quite categorical that a certain number of witnesses is not needed to establish any fact; quality and not quantity is the determinant. Another exception to the overall obligation to testify is privileged communications. An example is the communications between the legal advisers and the clients, which are secured to maintain confidentiality and effective legal representation. On the same note, some official communications and marital communications can be withheld, but this is limited by statute.

Accomplice testimony is also a different category of law of evidence. An accomplice refers to the individual who has been involved in the carrying out of an offence and then testifies against a fellow accused. The law allows recourse to the uncorroborated testimony of an accomplice, but as a rule of prudence, the courts usually desire a corroboration in material particulars. This precaution is due to the awareness of the possibility that an accomplice can be motivated by self-exculpation, or even anticipation of a soft treatment.

The idea of a witness in Indian law is based on a compromise between inclusiveness and

⁸⁸ <https://www.nacdl.org/getattachment/fada47e0-4eb1-4a28-8ec3-166234331eb4/cross-examination-of-difficult-witnesses.pdf>

security. This liberal understanding of competency and, at the same time, the safeguards of cross-examination, privilege, and judicial review are meant to accomplish the same goal: that testimony will help find the truth without undermining its fairness or reliability.

Stages of Examination of a Witness

The interrogation of a witness provided under Section 135 to 166 of the Indian Evidence Act, 1872 is conducted systematically and progressively in order to give out truth at the same time not being unfair to both parties. The 135 section holds that the sequence of production and examination of witnesses should be governed by the law and practice of the court and allows procedural flexibility with the protection of the statutes. The three known phases of examination of a witness are laid down in Sections 137 and 138, namely examination-in-chief, cross-examination and re-examination. All stages have their own evidentiary aim, and the combination of all will guarantee that the testimony is put to the test, explained and valued in all possible ways before being trusted by the court.

The first level is examination-in-chief and involves questioning a witness by the party calling him. It is mainly done to present to the court the pertinent facts that prove the case under review by the party that is examining. The evidence should refer to facts in issue or relevant facts as spelt out in the Act. In this step, the leading questions are those that imply the answer, which are normally barred by Sections 141 and 142, unless allowed by the court on introductory or undisputed issues. This is to ensure that the version of the witness is spontaneous and authentic since he or she is not coached or prompted in any way. The extent of examination-in-chief is limited to the facts, and the court has the right to bar irrelevant, scandalous and inadmissible questions⁸⁹. At this point, documentary evidence, once it is relied upon, is typically

presented by the witness according to the procedural system of evidence.

The second stage is the cross-examination, which is considered one of the most effective methods of proving the testimony of a witness. It is the interrogation of a witness by the adversary party as provided in Section 137 and regulated in Section 138. It comes right after the examination-in-chief unless the court otherwise orders. In contrast to examination-in-chief, the leading questions are allowed as part of the cross-examination under Section 143. The extent of cross-examination is much broader; it is not limited by the facts mentioned in examination-in-chief and can provide the entire range of any facts that are important to the case, including those that undermine the credibility of the witness. Sections 145 to 155 also give the cross-examiner power to attack the witness with his or her prior written statements, impeach his or her credibility, test accuracy, and bias, interest, or inconsistency⁹⁰. This stage ensures procedural fairness by allowing the opposing party to challenge testimony and reveal exaggerations or falsehoods. However, judicial control remains paramount, and the court may forbid indecent, scandalous, or vexatious questioning under Sections 151 and 152.

Re-examination is the final stage and is conducted by the party who originally called the witness. Its principal purpose is to clarify ambiguities or explain matters arising out of cross-examination. It is not intended to allow repetition of examination-in-chief or to fill lacunae in the case. The scope of re-examination is therefore limited to issues that emerged during cross-examination. If new matter is sought to be introduced, Section 138 requires the permission of the court, and the adverse party must be allowed to further cross-examine on that new matter. This safeguard maintains procedural balance and prevents surprise. Through this threefold structure, the Act ensures that witness testimony is presented,

⁸⁹ Ratanlal & Dhirajlal, *The Law of Evidence* (27th ed. 2019).

⁹⁰ Avtar Singh, *Principles of the Law of Evidence* (24th ed. 2022).

scrutinised, and refined in a manner consistent with principles of natural justice and fair trial.

Cross-Examination: Nature, Scope, and Objectives

One of the most crucial elements of the adversarial trial procedure is cross-examination, and it is an influential tool that could be used to challenge the credibility of the evidence that is brought to court. It denotes the impeachment or questioning of a witness by the party against whom that witness has been summoned, and the main object of which is to impugn the veracity, exactness, and fullness of the testimony provided by the witness when called in chief evidence. It has origins in the adversarial system of justice, which developed in medieval England, in which the parties to a dispute were granted the main role of presenting and opposing evidence before an unprejudiced judge. Cross-examination as a protection mechanism came into play within the common law premises and was necessary to promote fair play, transparency, and accountability in the courts. With time, it has been identified not only as a procedural formality but as a substantive right, especially in criminal cases where the freedom of the accused is involved. The oral testimony and the possibility to face the accusers were highly valued in the common law tradition, and cross-examination evolved as the major way of proving this testimony in the open court.

Historically, the development of cross-examination is more or less related to the development of jury trials in the common law countries. The fact that juries became the centre of fact-finding made the need to test witnesses rigorously increasingly stronger. The adversarial system was such that opposing counsel were charged with the role of uncovering exaggerations, bias, falsehood and inconsistencies by posing strategic questions. Contrary to the inquisitorial system, which is characterised by the judges taking a leading role in the collection of evidence, the adversarial model is based on the examination and cross-

examination of parties as an avenue of determining the truth. This historical process reinforced the notion that truth could be found best by the conflict between competing accounts, all of which were subjected to intense questioning by an impartial judge.

The purposes of cross-examination are multi-purpose and not limited to the contradiction of the witness. It is one of the main purposes to check the credibility of the witness. Credibility includes the truthfulness of the witness of the case, but it is also the ability of the person to observe, remember and tell the facts accurately. By questioning the opponent carefully, the opposing party can enquire whether the witness had an excellent chance to see the facts, whether the witness has a good memory, or whether the witness lacks sense due to bias or prejudice or due to personal interest. Cross-examination is, therefore, a device for determining the weight to be assigned to testimony.

The discovery of truth is also another major goal. Cross-examination can seem aggressive, but at a further level, it helps the court to distinguish between credible evidence and questionable evidence. Through challenging a witness on made statements previously, conflicting facts or other possible interpretations, the counsel can spot inconsistencies that could undermine the narrative. It can also be used to impeach the character of the witness where the law allows it to be done, particularly when the credibility is the focus of the case. The questions can be posed in an attempt to reveal motives to falsify, past inconsistent behavior or a situation that leads to a lack of trustworthiness. Secondly, cross-examination is commonly employed in order to elicit favourable facts, which were not mentioned during examination-in-chief. Even when a witness is uncooperative, a good advocate could get him to confess, which would favour and thus convert negative evidence into a competitive advantage.

Cross-examination usually covers a broader scope than does examination-in-chief. Whereas examination-in-chief is limited to the facts applicable in issue, cross-examination can cover more general-purpose matters that can impact on the truth and credibility of the witness. The questions can be posed to evaluate the veracity of the statements made, to find out who the witness is and their life status, because these can make him/her less reliable. As an example, the education history, work experience, connection with the involved parties, and individual interests of the witness can all be investigated in case they can have an impact on credibility. The cross-examination of a witness under the statutory provisions like the Indian Evidence Act, 1872, especially under Section 146 in particular, specifically authorises the cross-examination to seek to test the veracity, identify and locate the position of the witness in life, and undermine their credit by injuring their character, under the control and permissibility of the law.

Nevertheless, there is no limit to the broad range of cross-examination. Courts still have the discretion to preclude questions which are scandalous, indecent or geared towards harassing or humiliating the witness without any reference to the issues at hand in the dispute. The delicate matter of judicial sensitivity in cross-examination and preservation of witness dignity is a developing subject of legal discourse, this is especially in cases of vulnerable witnesses. The law is that questioning should correspond, either directly or indirectly, to the credibility of the witness or to the facts at issue.

The leading questions take a special place in cross-examination. A leading question is a question that indicates the response or carries embedded in it the information that the examiner is interested in verifying. Although leading questions are usually not allowed in examination-in-chief, except permission granted by the court, they are, of course, allowed in cross-examination. The reason being the purpose of cross-examination is to test and

keep the testimony of a hostile witness in check, and leading questions allow the counsel to shape the story effectively and expose inconsistencies with accuracy. The judicial practice in this connection has always been aware of the fact that permitting leading questions in cross-examination makes the process even more effective, when it is not turned into intimidation and abuse.

The cross-examination is one of the foundations of the rights of fair trial in the adversarial system. It runs as a truth test, a defence of the accused, and a guiding tool to help the court draw fair conclusions. The cross-examination remains one of the most effective tools in the delivery of justice by integrating historical development and clearly spelt-out goals and a well-calibrated scope.

Limitations and Safeguards in Cross-Examination

Although cross-examination can be considered one of the most effective instruments for finding the truth during a court process, it is not an unlimited privilege. The Indian Evidence Act has also provided certain provisions to prevent the tendency of the process developing into harassment, character assassination or intimidation of witnesses. This protective system is reflected in sections 151 and 152 of the Act that impose substantive restrictions on the character of questions that can be posed in cross-examination. Section 151 has banned questions which are indecent or scandalous unless it refers directly to facts in issue or are essential to ascertain relevant facts. This clause depicts a balance between the right to a fair trial and the right to the dignity of the accused as opposed to the witness. In the same manner, Section 152 gives the court authority to prohibit questions that are aimed at insulting or annoying a witness, despite having some significance on credibility. The trial judge, therefore, becomes a proactive body that controls the tone and extent of the cross-examination so that the cross-examination is only a process that brings the truth and not a

form of oppression. The rule that procedural fairness should be accompanied by human dignity is enhanced by the fact that the court has the power to bar unseemly or frivolous interrogation.

Such safeguards are even more critical in situations dealing with sexual offences and in which victims are highly susceptible to secondary victimisation in the courtroom. Protections against intrusive and humiliating questioning have been enhanced by legislative changes, particularly after the Criminal Law (Amendment) Act, 2013. The clause to Section 146 of the Indian Evidence Act specially prohibits the use of questions in cross-examination to impugn the character of the prosecutrix by reference to her general immoral character or prior sexual experience of prosecution in sexual offences. Such a rape shield defence signifies a tremendous change to the previous practice of evidentiary procedures, in which defence lawyers frequently sought to impugn the credibility of a victim by insinuations as to her sexual past. The reform acknowledges that this questioning is not only irrelevant to the problem of consent in the particular incident but also creates negative stereotypes. The insulation of the victims against degrading interrogation questions by the law is aimed at encouraging reporting of sexual offences and respecting constitutional values of privacy and dignity, and at the same time does not deny the accused the right to object to the evidence presented by the prosecution on any relevant grounds.

The other major weakness in cross-examination is observed when the hostile witnesses appear. The provisions of Section 154 of the Indian Evidence Act allow the court, at its own judgment can allow a party calling a witness to ask questions like cross-examination when the witness seems adverse or unwilling to say what is true. A witness may be declared as hostile, but it does not necessarily make them inadmissible in court; it simply gives the convening party the ability to put the witness against himself with contradictory statements made earlier to find out their reliability. Notably,

the adverse impact of hostile evidence is not annulled in totality. The courts had always maintained that the part of the testimony that makes one have confidence and is supplemented by other pieces of evidence can still be trusted. In this way, the doctrine of hostile witness portrays a subtle strategy: it ensures fairness of the trial procedure by allowing successful impeachment, and it preserves the discretion of the judge to decide on the trustworthiness of every piece of information. All these statutory and judicial protections are the representation of the fact that cross-examination, despite all its vigour and adversarial nature, is conducted within well-structured legal and ethical frames that will help guarantee fairness, dignity, and justice.

Judicial Interpretation and Landmark Cases

The right to cross-examination has always been stressed by judicial interpretation as a part of a fair criminal trial and as such a necessary protection against wrongful conviction. The right, though mainly based on the procedural law provided in the Indian Evidence Act, 1872, is raised by the higher judiciary to a constitutional level by connecting it with the article 21 of the Constitution of India, which provides the right to life and personal liberty. The Supreme Court has consistently ruled that a fair trial is one of the procedures as defined by the law in Article 21 and denial of proper cross-examination is equal to being denied natural justice. The principles of audi alteram partem, which state that no one should be condemned without being heard, have to incorporate the right to prove the veracity of the evidence by means of cross-examination. In the absence of this protection, the accused is not given a chance in good faith to counter negative testimony, and this compromises the integrity of the adjudicatory process.

In *State of Kerala v. K.T. Shaduli Grocery Dealer*⁹¹, the Supreme Court had firmly asserted that the privilege of cross-examining witnesses whose statements are taken is a fundamental part of

⁹¹ 1977 AIR 1627, 1977 SCR (3) 233, AIR 1977 SUPREME COURT 1627

natural justice. The Court determined that even in quasi-judicial cases where strict rules of evidence might not necessarily be relevant, the refusal to cross-examine the witnesses whose evidence is the foundation of a decision makes the proceedings unfair. This decision reinforced the overall constitutional interpretation that procedural fairness can not be compromised to promote administrative convenience. Similarly, in *Rameshwar v. State of Rajasthan*⁹², the Court touched on the evidentiary worth of testimony and the need to scrutinise it carefully by the Court. Though this case is usually referred to in the case of attestation of testimony, especially when it comes to such sensitive crimes, it highlights the idea that evidence should be put to the test by cross-examination so that it may be determined as reliable and credible evidence. As seen in the decision, cross-examination is not a ritual but a right that can help the court to differentiate true and false testimony.

The relevance of cross-examination is further increased with respect to hostile witnesses. In *Sat Paul v. Delhi Administration*⁹³, the Supreme Court expounded on the utility of the hostile witnesses as evidence and clarified that they should not necessarily be thrown out but ought to be considered keenly. This procedure to declare a witness hostile and cross-examine them by the side calling the witness proves the prominence of adversarial testing in the criminal justice system. Cross-examination can be used to reveal any contradictions, to demonstrate any prior inconsistent statements that the witness made and can also be used to determine the credibility of the witness in an effective manner.

The right to the cross-examination is closely connected with the doctrine of fair trial. A conviction upon untested evidence, or evidence on which the accused had not an opportunity to make a challenge, is susceptible to being overturned on appeal. The courts have

repeatedly ruled that in cases where the cross-examination is inappropriately limited or denied altogether, it is a severe prejudice to the accused and a nullification of the trial. On the other hand, successful cross-examination can expose discrepancies or lies that can result into acquittal. Cross-examination, therefore, has a balancing effect in the adversarial system where the rights of the accused are safeguarded and also helps the court to find out the truth. Its rejection goes to the core of procedural fairness and may lead to miscarriage of justice, and judicial vigilance in this respect is therefore essential.

Contemporary Challenges

The Indian law of evidence that is primarily governed by Indian evidence act of the year 1872 has over the decades been subjected to the interpretative expansion but has equally had its own critical challenges in the modern days that have continued to affect the dispensation of justice. One of the most topical problems is the problem of increased rates of hostility and intimidation of witnesses. Witnesses impact a lot in a criminal case and their testimony can instead resolve a guilty or an innocent individual. However, in many of the high profile and even ordinary criminal cases, witnesses switch their minds and renegotiate the statements they had made before or become antagonistic towards the trial. This is in most cases brought about by fear, coercion, inducement or social and political pressure. Organized crimes or sensitivity (political) witnesses could be threatened with their life or livelihood or family where there are influential people of the accused. This is also caused by lack of a strong and well established mechanisms of witness protection in the past, but more recently, an attempt has been made to resolve the issue, such as the Witness Protection Scheme enacted by the Supreme Court. This has yet, however, to be translated into practice and trial courts are finding it hard to locate consistent and reliable testimony.

⁹² 11/09/2023

⁹³ AIR1976SC294, 1976CRILJ295, (1976)78PLR194, (1976)

Going hand in hand with witness hostility is the further retardation of criminal trials. The more time the process takes, the more there is the likelihood of witnesses losing interest, forgetting critical information or feeling pressured. The different structural loopholes in the system, which lead to delays, include vacancies in the courts, adjournments, intricacies in the procedure, and overcrowded courts. In the scenarios where trials are distributed over a few years, the witness memory will lead to loss of memory, and the documentary evidence may have lost the location, and people will lose trust in the justice system. Delay not only leads to the weakening of the evidentiary integrity, but also discourages and frustrates the rights of the people who have been affected and the accused persons. The rapid trial, which is promised in Article 21 of the Constitution, is often flouted during the practical process, and consequently, it has an impact on the plausibility of the very evidentiary process.

The other, more significant current trend is that there is an increased reliance on electronic forms of collecting evidence, particularly the use of video conferencing. This has seen the courts increasingly enjoying the fact that they can capture the testimony through the use of electronics, especially where they have a weak witness or where the witness is foreign, and other unique conditions, such as where the health of the people is at stake. The Supreme Court of India has realised that procedural law must be in touch with technology in order that access to justice and effectiveness be attained. The use of video conferencing, nevertheless, generates strong issues as far as authenticity, voluntariness, and process safeguards are concerned. The courts also should ensure that the image of the witness is highly authenticated, there is no external influence or encouragement when giving evidence and that the accused has the full right to effective cross-examination. Digital examination is also affected by the lack of standard infrastructure, and the lack of technical hiccups in the lower courts and the lack of high connection speed in

the subordinate courts, which further complicates the reliability of the digital examination. Even though technology could assist in reducing the loss of time and enhancing the convenience, it has to be linked with high rates of protection to prevent the breach of the integrity of the evidence and the impartiality of the trial.

Along with technological problems, the misuse of cross-examination has become extremely critical as an ethical and procedural concern. The use of cross-examination is to a large extent a necessity to gauge the credibility, consistency and reliability of a witness. It is the principle of adversarialism and protects the rights of the accused. However, the truth is that cross-examination is sometimes employed as a weapon in an effort to harass or intimidate the witnesses rather than to extract the truth. It is most particularly prominent in issues that border on sexual offences, or domestic violence, whereby the defence will set out to contaminate the complainant by examining into her past behaviours, character or personal lives in ways that are unseemly and embarrassing. Although the statutes and judicial statements have been amended to limit the questions about the character of the victims and revolve around the character of the victims, the social attitudes firmly embedded are very important in the court strategies.

Sex discrimination is a minority in the evidential process. Female witnesses, especially those who are part of the sexual violence cases, tend to be susceptible to scepticism and moral judgment, which cannot be said about the male witnesses. Defence measures are occasionally grounded in stereotyping in terms of behaviour, attire or lack of reporting in a timely fashion, hence putting the stress on the alleged crime into the background and the victim's character to the foreground. Such practices would not only be traumatising to the members of the constitution, but also the principle of dignity and equality that are entrenched in the constitutional jurisprudence would be undermined. The courts have on many

occasions emphasised that the cross-examination must be conducted in a very ethical and legal manner, yet this necessitates that the trial judges must be very vigilant to make sure that effective cross-examination is done. The prosecution should be interfered with by the judiciary to provide an irrelevant, scandalous or oppressive enquiry; however, the judiciary should not interfere too much since fairness to the defence may also be considered. Balance should therefore be developed.

The ethics of advocacy are being called into question. Lawyers are the officers of the court, who are expected to act professionally and become aggressive representatives of their clients. In competitive litigation and adversarial stress to win, however, such ethical lines are sometimes blurred. Trying to confuse the witnesses or deliberate attempts to delay the process by using violence, calculated steps should be helpful in achieving short-term strategic advantages, but, in the long-term perspective, it will weaken the justice delivery system. The absence of strict accountability policies towards unethical methods of cross-examination or intimidation is also not helpful.

One can find this in the tension between procedural protection and the practical reality of contemporary issues of the law of evidence. Witness intimidation, delay of trials, technological changeovers, and abuse of cross-examination all put pressure on the evidentiary system. Though legislative reforms and judicial innovations have tried to address these issues, the only real thing is to make it happen. Protecting witnesses, investing in the judicial infrastructure, digitalising the procedures and making the courtrooms ethically accountable are the necessary courses of action to ensure that the evidentiary processes are not unfair, unreliable, and inconsistent with the constitutional values.

Conclusion

The discussion above reveals that cross-examination is one of the most important activities of the criminal justice system that

cannot be afforded in the process of establishing the truth. This evidence and cross-examination rules, according to the Indian law, imply that the Indian legal system was extremely worried about procedural fairness, adversariality in questioning the witnesses, and the fact that the accused had the right to a just trial. The Indian evidences have been so constructed that the evidence can be impugned, inconsistencies uncovered, and even lying can be challenged in an open court. This edifice is a manifestation of the constitutional right to a just procedure and the natural justice that further promotes a sense of fairness to members of the justice administration.

Meanwhile, the actual details of cross-examination show that there are certain loopholes that should be taken into account. The procedural safety measures that are directed towards the protection of the witnesses, particularly the women, the children and other vulnerable members, are not always taken consistently. The issue of cross-examination or lack of control of aggressive or irrelevant lines of questioning is sometimes raised through the lack of uniformity in judicial rulings. Such distinctions can be detrimental to the veracity of the witnesses and the rights of the alleged. The balanced system must not, in turn, turn on both flanks; over-examination may result in a second victimisation, but on the other hand, excessive regulation will result in a decay of the fundamental right of an individual to doubt the evidence against him.

The greatest problem that the legal system should endeavour to strike is the balancing of these warring interests. The uniformity of judicial rulings is required to ensure that the courts make use of a predictable and principled application of the rules of evidentiary application. Cross-examination should also be effective enough to undermine credibility, as well as reliability, and harsh enough not to encroach on the dignity and psychological well-being of witnesses. Such an equilibrium

depicts not procedural fairness per se, but constitutional morality.

To this extent, there is a necessity to have significant reforms. Further elaboration of witness protection procedures, better specification of legal statutes on legal investigation that could be undertaken, and promotion of systematic judicial control in situations where the witness is being cross-examined can result in increased fairness. Ethical training of advocacy in cross-examination would also be an additional mile in ensuring that advocacy is not reduced to harassment. Moreover, the application of technology, i.e. video conferencing, in-camera proceedings, and protection of vulnerable witnesses should be carefully applied without subjecting the testimony to undermine the truth.

In conclusion, the cross-examination has been the essence of finding the truth and justice of the system. Its legitimacy is, however, on a prudent compromise between adversarial rigour and human dignity. Fair, balanced, and humanitarian evidence practice is not only desirable but also obligatory to the whole concept of justice.

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