



# **Cross Examination of Witness under the Indian Evidence Act**

Ashok Kumar Kasaudhan

Department of Law, Galgotias University, Yamuna Expressway Greater Noida, Uttar Pradesh, India

Email Id: ashok.kasaudhan@Galgotiasuniversity.edu.in

**ABSTRACT:**Any examination is only done when there are some new facts from the case it is very necessary to examination of witness, but that examination shall be on genuine facts, in cross examination there is no provision to ask leading questions from the other side that questions shall only be asked when court give permission. It is the best tool to clear all the false objections and get something new facts. The general description of trial is it starts with framing of charges and end with the conviction or acquittal of accused. It is all on court decision to give justice to victim and penalize the accused. There are many amendments also implementing by Government of India which is very necessary to stop the crime and decrease the ratio because every citizen believe on only justice. The laws also clear that no citizen shall be wrongly penalized.

**KEYWORDS:**Crime, Criminal justice, Examination, Penalties, Trial

## **I. INTRODUCTION**

In criminal litigation it has been saying well versed that a good lawyer/attorney turns evidence into facts and facts into truth. In every trial prosecutors must call for witnesses. Examination –in-chief is one of the most important and starting form of advocacy, it can be used as a tool to extract truth from the facts. The power of cross-examination is the optimum as it can turn the face of the case.

During cross-examination the role of experts also plays an important role in any case, experts may be doctor, police, and any other person who is the eye-witness of the case. Experts have a vast knowledge in any field or subject which have expertise. When a case deal with a special subject, the necessity of expertise is must because they all examine the whole case. The opinions of experts help judges also to reach on proper conclusion which ensures the path of proper justice. In criminal litigation, the court call for experts when it has maximum need in any case, but the opinion of experts cannot be considered to be binding upon the court and it would all on court whether it would like to decide the case on expert opinion or not.

In criminal-trial there are three stage of examination such as examination-in-chief, cross-examination of witness and re-examination. In Indian court system these three stages are on hierarchy basis.

Leading questions also plays an important role while examining, cross-examining and re-examination of a witness. In litigation leading question can be objected by one party when other party ask a leading questions from witness in cross-examination. The Judge also objects the advocate of other party when he asked leading questions. A leading question may be permissible only by court in case where the facts are introductory or undisputed. No leading questions can be asked in examination-in-chief, such types of questions only asked when the opposite party has no objection.

Objective of the study:

- To understand the concept of criminal justice system in India
- To understand the theory of trial what is exactly means and how to conduct trial
- To provide solutions for improvement

Research methodology:

This research conducts the outcome of an overview of study of criminal justice system in India, how to overcome from these problems. The study is basis on facts, the collection of study is from various primary sources such as blogs, newspaper articles.



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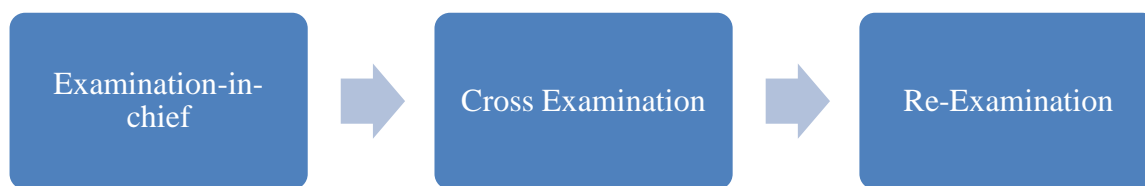
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Scope: this study discuss different hierarchy structure of trial, it includes the major drawbacks facing in trial and criminal justice system.

## II. DISCUSSION

Stages of Examination of witness: under criminal and civil matters there are three stages of trial proceedings such as cross-examination, examination-in-chief and re-examination of witness.



*Examination-in-Chief:* Under section 137 of Indian Evidence Act, examination-in-chief means the party that called the witness examines him. The opposite party may ask the questions related to cases from witness when he wants. After taking oath before Judge this is the first process. Other name of examination-in-chief is direct examination. The questions raised in examination-in-chief is to be of general nature which is related with facts of the evidence, there is no process to ask any leading questions. Leading questions only ask when re-examination of witness is conducted.

Objectives of Examination-in-chief:

- It overcomes the burden of proof legally sufficient
- It must be remembered and understood
- Persuasive
- Contradictory and anticipatory and of evidence that the opposition will present
- All the evidences must be admissible
- To present a complete and logical, rational theory of the offence

Certain guideline while preparing Examination-in-chief:

- In Examination-in-chief the primary point is frame the outline.
- Maintaining eye contact is necessary when there is any chief of witness
- To sketch out the relevant questions
- Leading question should not asked by other party, except in certain circumstances
- The Examination-in-chief must indirectly counter all rebutting which may crop the

Questions of cross examinations.

- Practice before mirror is must it shows to maintain with lawyer language, smile, tone, eye

Contact while conversation with witness.

- Use of proper phrases when draft a picture
- Questions must be on general and reasonable ground

*Cross Examination:* This is the second stage of criminal trial proceedings i.e. the examination of witness by the party who calls him. In trial, when a witness is called upon for oral examination, his statement shall be considered as examination in chief. It is on court whether it hears witness orally.

Objective of cross-examination:

- The positive fact known to the witness that help your case or damage your opponent case.
- It challenge the accuracy of testimony

*Observations:*

- Who, what, where, when and hoe
- Surrounding conditions
- Is there any hearsay involved?
- Witness is not the best person to provide the evidence

*Memory:*

- Passage of time



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- Confusion with other similar circumstances
- Reconstruction from other sources
- Bias

*Expression:* Language permits many expressions of the same order, idea to reduce impact.

- To modify the expression of opinion to reduce its impact
- To present a complete theory of offence
- Use the evidence of one witness to support another to prove the fact
- Fill in gaps in the evidence
- Relevancy of witness be must

Following questions can be asked during cross-examination:

- Please state your name for the record
- Are you the party in this case?
- You are working on xyz role as a xyz designation
- Is it true you have never refused to work overtime what Mr. y suggested you?
- Is your head of the family known as the name of so and so?

How to prepare for cross examination:

- The advocate of defence side must prepare himself adequately
- He must read the police report (chargesheet) , seizure memo, FIR and police statement
- He must know about the accused and the offence that commits from him
- the facts of the case is to be true if there is any frivolous then the accused shall be penalized with heavy fine

*Re-Examination:* If other party not satisfied while examining witness in cross examination or examination in chief, it is very necessary to take permission from court. Without permission of court no re-examination can be conducted, if court thinks some new facts can come while examination then it gives the permission to re-examine the witness. The purpose behind this is to nullify the effect of favorable evidence.

Objective of Re-Examination:

- For non satisfaction of question
- To get some new facts of the case while examination
- If no relevant facts are answered by the witness, his testimony can be rejected and

thereafter, there is no requirement of re-examination.

Examination of non-witness: under section 139 examination of witness can be defined as a person summoned to produce a document does not become a witness by the mere facts that he produces it and cannot be cross examined unless and unless he has been called as a witness.

Recall of Witnesses: under Order 18 Rule 1 and 2 of code of civil procedure. The witness can be examined in chief by way of his affidavit and he can be cross examined

*Procedure in Trial:* under section 311 of CrPC the court has power to summon or to examine a person who is present at “any stage” of “any inquiry”, “or “trial”, or “any other proceedings” under CrPC, or to summon any person as a witness, or to recall and re-examine any person who has already been examined if his evidence appears to it. <sup>1</sup>

Examinations of witnesses in CrPC are as follows in Figure 1:

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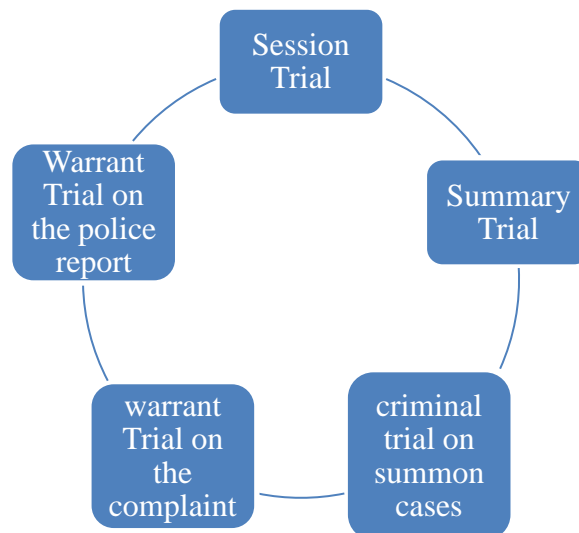
<sup>1</sup>The code of criminal procedure/sections/procedure in Trial



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**Figure 1: Witnesses Examination in CrpC**

In criminal cases the examination of witnesses are present in all trials of CrPC, such as in the warrant trial when police officer made the report examination of witnesses are conducted by the prosecution after the charges are framed and accused pleads guilty, then the court give task to cross-examine the witness and prove the guilty of the accused. While conducting examination of witness the Magistrate has the power to issue summons that appear as a witnesses. After completing the examination-in-chief the defendant advocate can ask the questions from the prosecution witness which is known as cross-examination of witness and the final stage is of re-examination, after conducting cross examination, if the prosecution has some queries then he asks the question from the witness with the permission of Court, if court permits and thinks that to re-examine the witness, then it can be done otherwise not which is known as re-examination. In warrant trial, court examine the witnesses and complainant in the examination of witnesses on the same day, and then decide any offence is made against the accused or not. Then the Magistrate order to conduct an inquiry in which the matter submits a report for the same. After conducting the whole process of examination and listen the whole case of accused, if Judge thinks that the complaint of accused is genuine and prosecution also collect sufficient evidences against the accused then court decide to accept the application and convict the accused. And if the complaint is frivolous and court does not find the sufficient material then the court has a power to reject that application and guilt the accused.

Procedure in summon trial:

In the first stage, the accused appears before Magistrate when the summon has been issued and if the accused not appear before court or before Magistrate then those summons shall be sent by post and after all this there is no response then Magistrate have discretionary powers sentence him to pay fine. In the second stage the accused has been convicted. In this case the Judge has powers to convert summons case into warrant case.

Examination of witnesses under the code of civil procedure: under order XVIII Rule 4 to 16 this examination process can be discuss as:

Rule 4: define as a party who called the witness for the examination of witnesses in every case shall be on affidavit and that affidavit shall be duly attested by oath commissioner and then same affidavit shall be supplied to opposite party. The court shall record the statement of witnesses during the examination of witnesses either in writing or in the presence of Judge. If a commissioner is appointed then he shall also record the statement of witnesses which is very important. If there is any objection in the report, then it can be decided by the court at the stage of arguments. That report shall be submitted by the commissioner to the court within sixty days. The judges of High Court and District have powers to constitute a panel of commissioners to record the evidence.

Legal provisions relating to trials:

- Session Trial (Section 225-237)
- Warrant Trial (Section 238-250)
- Trial of summon by magistrates (Sec 251-259)



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- Provisions relating to summary trials (Sec 260-265)
- *Session Trial (Section 225 to 237)*: if any offence is committed and punishable with more than seven years of imprisonment or life imprisonment or death then the trial is to be conducted in a session's court after being forwarded to Magistrate.
- *Warrant Trial (Section 238 to 250)*: warrant case include offence punishable with the death penalty, imprisonment for life and imprisonment exceeding two years. A trial in a warrant case begins with either filing of FIR in police station or before a Magistrate.
- *Summon Trial (Section 251 to 259)*: summon case means a case which is not a warrant case. Under summary trial if the offence committed is punishable with less than two years of imprisonment, it is taken as summon case.
- *Summary Trial (Section 260-265)*: under summary trial there is disposal of cases speedily with a simple procedure to follow and recording of such trials are done summarily. In these types of trials only small cases are taken in hand.<sup>2</sup>

*Call of witnesses from the courtroom*: when the party starts the examination of witnesses of the evidence then the other witness must be kept out from the courtroom. When the examination of one witness is complete the next witness call for examination. If examination of one witness is complete then he shall be kept out from court. If a witness remains in the courtroom while conducting the examination of other witness when his examination is complete then his examination cannot be refused only a note to be made by Judge that he was present in the courtroom during the examination of another witness.

*Delayed in examination of a witness*: if there is any delayed during examination by the prosecution witness then the right of defence shall be closed to put any question to the investigation officer, in this case the accused has no right to contend that there was a delay in recording the statement of prosecution's witness and his evidence should be viewed with suspicion.

Objective of leading question: section 142 of Indian Evidence act define leading question as which is not relevant with facts of the case. Leading questions never to be asked while cross examine the witness it may be asked only in re-examination of witness. The court shall only permit to ask leading questions when it thinks fit. Leading questions such as is the plaintiff your father? Is not your name XYZ? Do you reside at XYZ place? And so many examples. Generally the answers are given in only yes or no.

When leading questions not to be asked:

- If there is objection raised by opposite party
- Not to be asked in cross-examination, only asked in re-examination
- No permission to ask any leading questions during cross, only permission must be taken from the court.

Exception:

- As to matters which are begin
- Which are unchallenged
- Matters in which the opinion of the court have already been proved

*Hostile witness (Section 154)*: With the permission of the court leading questions can be asked. It frequently occurs only when a witness who has been called in the outlook that he will speak to the existence of a specific state of facts, pretend that he does not remember those facts. In such cases questions arises whether by the deal of the witness the party producing him is eligible to cross examine. During a trial, when the prosecution counsel calls a person to witness in his favour and such person when called upon does not confirm to his previous statement during examination then this is called a hostile witness.

Reasons for people turning hostile:

- The absence of witness protection
- Prolonged trials
- Ease in bail
- Accused threatens
- Fear of political parties, fear of police

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<sup>2</sup>blogs.ipleaders.in/types of trials



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## Drawbacks:

- Due to lack of adequate system
- Due to pendency of old cases from many years
- Due to send of adequate investigation by police officers
- Rise in ratio of crime against women and children
- Due to lack in mentality

## Solutions:

- The system should be genuine
- To constitute more courts so that old matters can disposed of
- To increase the vacant positions of Judges
- The public prosecutors must be adequate
- The trial must be fair and not to be forced

## Judicial decisions:

*Sanjay vs. the State of Maharashtra*: the bench was held that Sessions Judge could not have put the entire shown in respect of putting forth the questions but then he was supposed to consider the relevancy of the questions first. In such type of cases the cross cannot be limited to the contents of the examination-in-chief. It may go beyond the limits lay down by the law. The purpose of the cross examination is to test the impeach the credit of the witnesses. The court was of the opinion that though relevancy and admissibility are used as used a synonym term, the relevancy of the question, generally comes from first and then admissibility is required to be decided.

*R.K. Chandolia v. CBI &Ors*: in the present case Delhi High Court was held that the court has to control and have the power to decide the relevancy and admissibility of any question that may be put to a witness.

*Deepak Chaudhary v. State, 2019 SCC Online Del 11321* in the present Delhi High Court direct the Trial Court to permit the applicant to confront the witness. Whereas trial Court declined the request of Petitioner by stating that this was a fact that had come across in answer to a question which is put in cross examination and was not a fact deposed to by the witness in his examination-in-chief and therefore can't be confronted as an improvement. Delhi High Court was observed that **“As per section 145 of the Indian Evidence Act, a witness can be contradicted with his previous statement. It is also a settled law that omission to mention the fact in the previous statement is contradiction and witness needs to be confronted with the said facts. Section 162 of the Code of Criminal Procedure contemplates that the previous statement recorded 161 Code of Criminal Procedure has to be confronted to the witness in accordance with Section 145 of the Indian Evidence Act. In these circumstances, if the petitioner is not allowed to confront the witness with his previous statement, prejudice will be caused to him and he will not be able to take advantage of the said contradiction.”**

*NirmalTiwari v. State of Uttaranchal*: in this case the applicant has prayed for quashing of the order passed by trial court. The Trial Court refused the petitioner right to cross examination on adjournment. It is well settled that the right to cross-examination is always available. Cross-examination is always available cross examination is part of Article 21 of the Constitution.

*Union of India v. T.R Verma*, it was held that if in the deposition of the witnesses, there was no cross examination because the record was not made, it can be said that, in fact the party entitled to cross examine did not cross examine and not that the opportunity to cross examine was not admitted.

## Other Sections covered under this act:

- Impeaching credit of witness (section 155)
- Questions tending to substantiate evidence of applicable fact which is admissible (section 156)
- Previous statements of witness may be proved to confirm latter testimony as to same fact (section 157)
- What matters may be proved in connection with proved statement relevant read with section 32 and 33 (section 158)
- Refreshing the memory of witness (section 159)
- Right to opposite party as to writing used to refresh memory (section 161)
- Production of documents (section 162)
- Giving as evidence of document called for and produced on notice (section 163)





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## III. CONCLUSION

From the whole study it has been discussed as for any case if there is cross examination conduct then it should be on general view. No questions shall be asked from the opposite side on false issue. While examine the cross examination it is very necessary no lead questions shall be asked from opposite side to witness if the court think it is very relevant from the facts then it permit to the opposite side. Without the court permission no lead questions shall be asked. It is very necessary what questions has been asked from the advocate, if the opposite party thinks it is wrong then that questions must be objected from the opposite side. And also tell the powers of the court, if Judge use the wrong powers and convict accused in a wrong manner then the accused also has a right to challenge the wrong order. Governments of India also frame some new guidelines to improve the penal provisions so that the ratio of crime shall be decreased.

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