BLOGS

Cross-Examination of Witness under the Indian Evidence Act: A Comprehensive Overview

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Introduction

Examination of a witness can be done in 3 steps. First, '**Examination-in-Chief**' which is the examination of a witness by the party who calls him. Second, '**Cross-Examination**' which is the examination of a witness by the adverse party and the third, '**Re-Examination**' which is the examination of a witness, subsequent to the cross-examination by the party who called him.

Cross-Examination under Indian Evidence Act

Cross-examination is a fundamental component of the legal process and plays a pivotal role in the Indian legal system. It is a stage in a trial where one party questions a witness called by the opposing side to test their credibility, assess their accuracy, and uncover inconsistencies or biases

in their testimony.

The process of cross-examination in India is governed by the Indian Evidence Act, 1872, specifically Sections 137 to 166. In this comprehensive overview, we will delve into the key aspects of cross-examination, its purpose, techniques, and its significance in the administration of justice.

Cross-examination is a crucial element of the adversarial system of justice. It allows each party to scrutinize the evidence presented by the opposing side, challenge the credibility of witnesses, and test the veracity of their statements. In this process, a lawyer aims to elicit information that may be beneficial to their client's case or to discredit the opposing party's witnesses.

Purpose of Cross-Examination

Cross-examination serves several essential purposes:

a. Testing Witness Credibility One of the primary functions of cross-examination is to assess the credibility of the witness. This involves challenging their reliability and trustworthiness, which can impact the weight that the court assigns to their testimony.

b. Uncovering Inconsistencies Cross-examination allows the opposing party to identify inconsistencies or contradictions in the witness's testimony. These inconsistencies can be used to undermine the credibility of the witness.

c. Revealing Bias or Prejudice Cross-examination can expose any bias, prejudice, or motive that the witness may have, which could influence their testimony.

d. Clarifying Ambiguous or Vague Testimony Cross-examination can seek clarification when the witness's testimony is unclear or ambiguous. This can help ensure that the court has a complete and accurate understanding of the evidence.

e. Eliciting Favorable Information Cross-examination is not solely about challenging the witness. It can also be used to elicit information that supports the cross-examiner's case or provides a more complete picture of the events in question.

Provisions for Cross-Examination under Evidence Act

The Indian Evidence Act, 1872, provides several sections that govern cross-examination:

a. Section 137 – Examination-in-Chief, Cross-Examination, and Re-Examination

This section establishes the sequence of examination during a trial. It outlines that witnesses are first examined-in-chief by the party that called them, followed by cross-examination by the opposing party, and, if necessary, re-examination by the party that initially called the witness.

b. Section 138 – Order of Production and Examination of Witnesses

Section 138 details the order in which witnesses are to be examined. It primarily focuses on the examination-in-chief but indirectly relates to the process of cross-examination by specifying the sequence of producing witnesses.

c. Section 139 – Cross-Examination of a Person Called to Produce a Document

This section pertains to the cross-examination of a witness who has been called to produce a document in court. A person summoned to produce a document does not become a witness by the mere fact that he produces it and cannot be cross examined unless and until he is called as a witness.

d. Section 140 – Witnesses to character may be cross-examined and re-examined

Section 140 talks about the character of a party. “Character” of someone refers to their quality or characteristics that distinguish them. Especially mental and moral characteristics. It also includes a person’s reputation in society.

The section states that the witness to a party’s character can be cross-examined if the examination-in-chief has already been completed.

e. Section 145 – Cross-Examination as to previous statements in writing

Every statement given by a witness must be reduced to writing. At a later stage of the trial, cross-examination can be conducted based on the prior statements to check for contradictions and veracity. This can be a crucial tool for revealing inconsistencies in a witness’s testimony.

e. Section 146 – Questions Lawful in Cross-Examination

Section 146 states that during cross-examination of a witness, he may be asked questions to:

- Test the accuracy or truthfulness of his statements
- Understand more about the witness.
- To denounce his credibility.

f. Section 154 – Question by Party to His Own Witness This section allows a party to ask leading questions during the cross-examination of their own witness, primarily to expedite the process or elicit specific information.

Techniques of Cross-Examination

a. Leading Questions Leading questions are those that suggest the desired answer. In cross-examination, leading questions are often used to obtain yes or no responses, challenge the witness's version of events, or establish key facts.

b. Impeachment Cross-examiners may impeach the credibility of the witness by presenting evidence of prior inconsistent statements, bias, or other factors that may cast doubt on the witness's reliability.

c. Challenging the Witness's Memory Cross-examiners may question the witness's ability to recall details accurately, bringing up inconsistencies or gaps in their memory.

d. Confronting with Prior Statements Cross-examiners may confront the witness with prior written or oral statements that are inconsistent with their current testimony. This can reveal contradictions and erode the witness's credibility.

e. Establishing Motive or Bias Cross-examination may explore any motives, biases, or personal interests that could influence the witness's testimony. This is particularly relevant when challenging the witness's objectivity.

f. Force the Witness to Admit Cross-examiners may use persistent questioning to force the witness to admit certain facts or reveal inconsistencies in their testimony.

Re-Examination of a Witness

After cross-examination, the party that initially called the witness has the opportunity to conduct re-examination. Re-examination is limited to addressing matters that arose during cross-examination and is intended to clarify or correct any issues.

Conclusion

Cross-examination under the Indian Evidence Act is a critical stage in the legal process. It serves to test witness credibility, uncover inconsistencies, and reveal biases or motives that may affect the outcome of a case. While cross-examination is a powerful tool, it must be conducted with fairness, relevance, and respect for the rights of witnesses.

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