IJFANS INTERNATIONAL JOURNAL OF FOOD AND NUTRITIONAL SCIENCES
ISSN PRINT 2319 1775 Online 2320 7876
 UGC CARE Listed (Group -I) Journal Volume 11, Iss 12, 2022

An Analytical Study of Cross-Examination Dynamics and its Impact on the Justice Delivery System

Mangal Singh
Department of Law Maharishi Dayanand University, Rohtak.
E-mail:- mangalsingh618@gmail.com

Abstract
This study, titled " An Analytical Study of Cross-Examination Dynamics and its Impact on the Justice Delivery System," delves into the critical role of cross-examination in the judicial process. Focusing on civil and criminal trials, the research explores the intricate balance between witness examination and the quest for justice. It scrutinizes the procedural reforms, such as the introduction of affidavits for evidence-in-chief and the consequent challenges in civil courts. The study further examines the impact of piecemeal cross-examination, witness demeanor assessment, and the judicial discretion in handling objections and re-examinations. By analyzing key rulings and legal precedents, this research highlights the complexities and nuances of cross-examination, emphasizing its importance in the effective functioning of the justice delivery system. The study aims to provide a comprehensive understanding of cross-examination practices, identify areas needing reform, and suggest measures to optimize the process for quicker and fairer trial outcomes.
Keywords: Cross-Examination, Justice Delivery System, Judicial Process, Civil Procedure Code, Evidence Affidavits, Witness Demeanor, Legal Reforms, Trial Dynamics

1 INTRODUCTION:

The term "cross examination" is very important in the judicial system. The cross-examination of a witness is often seen as the most important part of a trial in a civil case, like as a motor accident claims case or a sessions lawsuit. Handling the case during cross-examination of a witness is the true test for a trial judge. An update to the Civil Procedure Code simplified the process of taking a primary witness's testimony in civil trials. Affidavits were allowed to be used for documenting the evidence in chief after an amendment in 2002. Filing evidence affidavits significantly cut down on the time spent in civil courts. But this has given the deponent the opportunity to make his argument as detailed as possible. It is clear from numerous situations that the affidavit goes to many pages.

It is customary for the defendant/respondent to thoroughly examine and challenge every word of the affidavit. It has also been standard practice to put together evidence during cross-examination. The main concern with this kind of piecemeal cross is that the Court's time is being wasted by repeatedly asking the same questions. Therefore, the court's presiding officer has to be alert and knowledgeable enough to recall the evidence from the last hearing. Both the deponent and his attorney have equal duty to notify the court in such a case. This adds unnecessary time to the cross-examination process, which causes delays. A piecemeal approach to cross-examination is one cause of trial delays; however, a deponent's incapacity or illness to concentrate for long periods of time also contributes to trial delays, as does the practice of pleading adjournment at a specific point in the cross-examination process. Once again, it is up to the Presiding Officer to determine whether the witness is really sick or just trying to prolong the matter.

There is no need to submit pleadings in Sessions or Criminal trials in order to limit cross-examination to a single defense. Because of this, the accused makes full use of every possible defense. As a result, the trial judge goes through a tremendous degree of stress while taking notes during cross-examination in Sessions and criminal cases.

Even though the judge is supposed to be very engaged in taking notes, there's an unexpected conflict about whether or not the questions asked of the witnesses are admissible. The judge is often supposed to sit on the bench and let the prosecution grill the witness with all the unnecessary questions. It is common practice to interrogate witnesses with questions designed to undermine their defenses. Basically, the true goal of getting to the bottom of things during cross-examination gets completely sidetracked, and the parties end up on a different path/version than they were expecting. Therefore, the purpose of this essay is to examine the elements impacting the Justice Delivery System and the significance of cross-examination.

2. CROSS EXAMINATION KEY FACTORS:

AFFIDAVIT IN CHIEF CONTENTS:

The main body of evidence must be as detailed as the pleadings. Arguments or contributions are not allowed. With this in mind, the following is noted in the ruling of the Bombay High Court from 7 April 2014 in the case of H arish Loyalka and another against Dileep Nevatia and others[1]:

The "examination in chief" must be conducted on affidavit in accordance with the requirements of Order 18 Rule 4 of the Code of Civil Procedure, 1908 ("CPC"). In other words, just as if the witness were in the witness box and his attorney were taking his direct evidence, the affidavit substituting examination in chief may only include what is appropriately admissible in examination in chief. A document that includes arguments and submissions does not qualify as an affidavit under CPC Order 19, Rule 3, or as an affidavit to replace examination in chief under CPC Order 18, Rule 4.

In addition, the judgment mentioned earlier emphasizes that if the main examination affidavit has mistakes, they may be changed, but this cannot happen often. As stated most prominently, the Court lacks the authority to change or remove specific parts of the affidavit in chief. The following sections are extracted:

"What is the proper procedure for a court to follow when faced with an affidavit that does not conform, meaning it includes information that is obviously not admissible or irrelevant?" In some cases, a party may be allowed to substitute an affidavit that meets the requirements. The Supreme Court ruled in Rasiklal Manikchand Dhariwal v. Mss Food Products[2] that an affidavit's accuracy is not always essential in every instance. However, in cases where an affidavit includes information that would not have been admissible as part of the witness's "testimony" under proper circumstances, it would be counterproductive to prohibit a party from replacing it with an affidavit that complies with CPC Order 18 Rule 4. This does not, however, imply that a party may 'test the waters' by submitting a series of non-conforming affidavits. It must surely be within the court's discretion to replace such an affidavit.

[1] *CDJ 2014 BHC 789*
[2] 2012 2 SCC 196

Assuming that the court's ability to remove any part of an admissible evidence affidavit is fully restored, the court can still decide which parts of the affidavit have been objected to and order that they are not to be considered as testimony. This means that a cross-examiner can ignore those parts without worrying that they will be taken the wrong way.

This means that the courts must give the opposing party enough time to read the main affidavit and make concerns during cross-examination before recording the testimony in principal via affidavit.

WITNESS RECALL:

Both the timing and sequence of witness examinations are predicated on the provisions of Rules 1 and 2 of Order 18 of the Civil Procedure Code. The witness is subject to both cross-examination and primary examination in light of his affidavit. The witness may be re-examined once cross-examination is complete if any element needs clarification or ambiguity has to be eliminated. Since this is not even considered in the preceding process, it cannot be accomplished by the additional affidavit. All of the aforementioned rules must be strictly adhered to. It is not possible to mark some remaining documents during re-examination via the use of an extra affidavit; instead, the witness may be asked to do so.

To make up for lost time or address unfinished business, a witness cannot be recalled. The Honourable Supreme Court of India reaffirmed this in the case of K.K. Velusamy v. N. Palanisamy[3], ruling as;

At any point during a lawsuit, the court may recall any examined witness (according to the applicable laws of evidence) and ask him whatever questions it sees proper under Order 18, Rule 17 of the Code. The court has the authority to summon any witness in accordance with Order 18, Rule 17, and it may do so either of its own initiative or in response to a motion submitted by one of the litigants. This discretionary authority allows the court to explain any uncertainties it may have about the evidence presented by the parties, but it should be utilized sparingly and only in suitable instances. You can't utilize that authority to make up for missing evidence from a witness who has already been cross-examined. In the case of Vadiraj Naggappa Vernekar v. Sharadchandra Prabhakar Gogate, (vide)[4]

The purpose of Order 18, Rule 17 of the Code is not to provide the parties the ability to bring witnesses back for further cross- or questioning or to present new information that was not available during the recording of the testimony. The main purpose of Order 18, Rule 17 is to allow the court to explain any matter or uncertainty by summoning any witness either on its own initiative or at the request of any party, in order for the court to ask questions and get answers. Naturally, whenever a witness is asked back to provide such explanation, it might ask the parties for help.

The Honorable Supreme Court of India reiterated this stance in Ram Rati Vs. Mange Ram[5]. The courts must exercise caution when considering recall petitions to avoid filling a void that may not really exist.

[3] 2011(2) R.C.R.(Civil) 875 : 2011(3) Recent Apex Judgments (R.A.J.) 83 : (2011) 11 SCC 275,

[4] 2009 4 SCC page 410

[5] CDJ 2016 SC 216

THREATS AGAINST EYEWITNESSES:

In a Sessions Case, there is no set protocol for how the questions should be asked of the witness. It must be determined, however, that the purpose of the cross-examination is not to bother the witness in order to appease the accused. In Sessions Cases, the judges must take the initiative to document the cross-examination of witnesses. An iconic landmark Decision handed down by the High Court of Madras's Division Bench in the case of Sampath Kumar and others vs. State by Periyanaicken palayam P.S[6]. highlights the unfortunate situation in Sessions Cases, where witnesses are harassed under the pretense of being cross-examined. Even if the relevant passages seem long, reading between the lines would surely send a disturbing message to all the Judges who handle Sessions Cases or may handle Sessions cases in the future. Just reading the pertinent passages that address the current judicial system might shed light on it.

53. Most importantly, the offenders' actions in this instance are very regrettable and utterly unacceptable. The event took place in 2009. Beginning in 2011, the matter was being heard by the Court of Sessions. The trial court was unable to formulate charges for four years because the accused refused to cooperate. Only on January 29, 2015, did the trial court formulate the charges. On 04.05.2015, P.Ws. 1–5 were inspected, and on 05.05.2015, P.W. 6 was examined. According to the trial court records, attorneys representing parties A1 through A11 were absent on the day their witnesses were examined. Although attorneys representing A12–A23 were present, he declined to conduct cross-examinations of the witnesses. Legal representation for cases A24–A27 was also nonexistent. In response to an application, P.W.1 was recalled and subjected to cross-examination on May 22, 2015, per an order dated May 15, 2015.

The attorneys for cases A12–A23 interrogated him. At 10:45 in the morning, the exchange of questions began. The skilled counsel concluded the fifteen-page cross-examination at 1:30 p.m. Counsel for A24 to A24 began cross-examination after lunch. It ran to twelve pages and ended at 5:30 p.m. P.W.1 was not cross-examined by A1 through A11 on that particular day. They went to the High Court, and on 27.08.2015, P.W.1 was recalled again in accordance with the High Court's instructions of 18.08.2015. The skilled lawyers for A1 to A11 cross-examined him that day, and the resultant document is sixteen pages long. This results in 45 pages of cross-examination of witnesses. Every word and sentence of the cross-examination has been reviewed. Even though it's 45 pages long, we haven't been able to uncover any evidence that may have benefited the accused during cross-examination. There are a lot of questions that seem like they are trying to harass the witnesses. The questions asked during cross-examination were presented as if there were no rules governing them. The lawyer failed to take into consideration the fact that the Evidence Act specifies which questions are permissible to ask a witness during cross-examination and which ones the witness has the right to refuse to answer. Additionally, the learned counsel has disregarded instances when the court could order the witnesses to testify and instances where the witnesses might exercise their discretion to testify even in the absence of coercion. These statutory requirements of the Evidence Act have been disregarded by the skilled counsel. Over the

[6] CDJ 2017 MHC 154

course of many days, the experienced counsel interrogated P.W.1 with a barrage of scandalous, irrelevant, and needless questions.

54. In a similar vein, P.W.2 was deemed hostile as he had failed to incriminate any parties during main examination. However, the defense did not question her that day. His lawyer recalled him and cross-examined him for A12–A23 on 20.05.2015 and for A23–A27 on the same day after main examination on 4.5.2015. Read the witness's cross-examination to see that it's all just harassment. No one from A1 to A11 undertook any cross-examination when he was recalled on 20.05.2015. The attorneys were there for the principal examinee's examination, but they were unprepared to question him. A1–A11 recalled P.W.2 and cross-examined him on 08.09.2015, as ordered by this court. The witness was subjected to eight pages of cross-examination and harassment once more. Based on what I can tell, the majority of the questions seem pertinent to the matter at hand. Everyone has asked him all the embarrassing and demeaning questions that aren't required. Similar to how P.W.3 was interrogated in chief on 04.05.2015, the accused's attorney was not prepared to cross-examine him on that day for no apparent reason. He was summoned back before being cross-examined a second time, all per the court's directive. Almost all of the eyewitnesses had experienced this. The learned senior counsel representing the accused expressed regret over his lack of fairness when we asked him to explain why the accused's lawyers could get away with violating professional ethics by not cross-examining any witnesses and instead planning to recall them in stages and harass them with unnecessary questions. He failed miserably when we asked him to identify any evidence that the accused's attorneys had utilized to bolster their case during the cross-examination of these witnesses. As a result, it is without dispute that the majority of the inquiries were harassing to the witnesses.

Gone are the days when defense attorneys would give their all to the court throughout trial, whether it meant cross-examining witnesses on the same day or refraining from asking irrelevant questions. This case exemplifies how certain attorneys' attitudes may so drastically shift, and how they use this to their advantage by harassing the witnesses. Having to go through the cross-examination of the witnesses in this case has been quite distressing. It is puzzling to us how the judge did nothing while the witnesses were subjected to such harassment. Our only purpose in expressing our sorrow over this decision is to make it clear that we are praying that no one will be able to take advantage of the justice delivery system. In the battle against the system, dishonest individuals may try all they want, but the tried-and-true system will endure.

Everyone involved, but notably the Judgmental Officers presiding over the Sessions Cases, has been taken aback by the above remarks made by Their Lordships. By giving this ruling its full force and effect, we can make sure that the Justice Delivery System is heading in the right way.

STRICT ADHERENCE TO THE DEFENSE'S PURVIEW:

Another important reason to document evidence is to prevent the advocate's lack of legal understanding from leading to a severe injustice for the accused, who might be guilty despite their innocence, due to the advocate's ignorance of the law. Attorneys representing clients in sessions cases are often required to draft a well-thought-out defense and prepare well for

cross-examination.

Evidence from several instances suggests that the prosecution often presses witnesses with questioning designed to implicate the accused. Occasionally, it becomes apparent that the questions posed during cross-examination are designed to mutually undermine the accused's defense, therefore establishing a strong presumption in their favor.

The witness is asked questions in the form of recommendations. In the process, you can miss the actual line of defense. Honestly, the accuser's purpose would be shown by the provocative inquiries. By just claiming it was only a suggestion, the accused is painting a defense image for the court. It can't be thrown together carelessly, without any rhyme or purpose. Therefore, one must exercise extreme caution while crafting suggestive questions for the witnesses, making sure not to drag the accused's legs. Covering and hovering about the defense, the provocative inquiries should highlight the accused's defense.

Here are a few examples that you could see in depositions. In this case, the precise deposition is not returned. For easier comprehension, the content is presented in the form of questions and answers. The specifics of the case are likewise not published here to protect privacy.

CASE No. I

(Mahila Court case involving PW1, victim in violation of section 376 of the Indian Penal Code)

Your maternal uncle had a land dispute with the accused, and I'm putting it to you that in an effort to get even with the accused, he encouraged you to file a false complaint against them. Now you're here in court, allegedly pleading false evidence to back up your false accusation.

I deny.

Question:

Answer:

(Thereafter the cross continues on several other aspects. While nearing the end of cross examination, it's very unfortunate that an incriminating question crushing the above defence if put to the witness)

Answer: I deny

Question: You are in the habit of riding bicycle. Is it not?

Answer: No.

Question: I put it to you that by virtue of your cycling habit, the doctor has wrongly concluded that you are exposed.

Answer: I deny.

Question: I put it to you that you developed one sided love affair on the accused and the accused was not interested in your proposal, and since the accused possess vast lands, and other properties, in order to have a wealthy groom, you and your family have falsely implicated the accused in this case and that the accused has not committed any offence.

Answer: I stoutly deny.

All of the aforementioned forms of mutually damaging defense would undoubtedly work against the accused. The major problem that has been handled poorly is how the accused could assert his knowledge of the victim's behaviors and how he could argue a one-sided love affair, given that he claims he had no familiarity with the victim. Legal representation can

only take a stance on one possible line of defense. In such a case, the trial judge has the authority to caution the counsel and order him to focus on the defense alone.

Judges are required to take a quick look at the counsel's cross-examination and then diligently follow up until it concludes. The judge would be much assisted in pinpointing potential areas where the incorrect questions may lead to a miscarriage of justice if this were done.

The aim is not to guarantee acquittal, but rather that a single innocent person should not be penalized because of ineffective cross-examination by their attorney, even if a thousand accused people manage to evade justice. These remarks are primarily directed at lawyers who approach the court without first consulting with more seasoned colleagues.

CASE No. II

(Case of Act 489 of the Indian Penal Code at the Additional Sessions Court)

Here, PW1 is the Sub Inspector who conducted raid and seized the counterfeit currency. Cross examination on PW1 is made as follows;

Question: I put it to you that you never arrested the accused nor seized any counterfeit currency from him and he never was available at the place indicated by you in your arrest card.

Answer: I deny

Question: You have secured the counterfeit notes from some other person andmade him to escape and nabbed this innocent accused.

Answer: I deny

Now the scientific expert is called as PW3 and cross examination is done asfollows;

Question: What type of analysis did you make to certify that the notes arecounterfeit.

Answer: The thickness of paper, the silver line in between, and the micro engrossing of the Reserve Bank of India differ in the above notes withthat of the standard guidelines given by the RBI. (Witness explains in detail)

Question: I put it to you that the notes verified by you are genuine, and authenticated rupee notes and that you have not applied your mind in verifying the notes properly and rather you have mentioned them to becounterfeit notes in a mechanical way.

Answer: I deny.

The accused's case is surely undermined by the amount and content of the questions mentioned above. Why the defense feels the need to cross-examine the expert is unclear given that their first proposal to PW1 was that the accused was nowhere to be found at the location of the crime and that no evidence was found on the accused. It is unclear how the expert could have testified about the rupee notes using whatever method(s), and it is also unclear how this would have affected the defendants. While the accused is trying to disprove the method and process of currency note inspection, he is essentially admitting his knowledge of the seizure, which would undermine his case.

Another issue is how to deal with witnesses who are hostile. The subject matter of the statements recorded under u/s 161(3) Cr.P.C. is to be scrutinized by the public prosecutor during cross-examination of the witnesses. It would be unlawful to mechanically record evidence in cross-examination by merely repeating the statement under section 161(3) of the Criminal Procedure Code without first asking questions pertaining to the ingredients of the

material detected.

PIECE MEAL CROSS EXAMINATION:

In the case of Vinoth Kumar Vs. State of Punjab[7], the Honourable Supreme Court of India strongly disapproves of piecemeal cross-examination. The case stipulates that trial court judges presiding over sessions cases must adhere to specific protocols when questioning witnesses and that all cross-examinations must be concluded on the same day. The cross-examination could only be postponed until the next day due to time constraints. All of the country's judicial officers have been sent the aforementioned judgment. On its own, the crucial passage from paragraph 41 of the aforementioned Judgment speaks volumes and is reproduced here.

The trial courts are legally obligated to adhere to the trial process and reject the request for an adjournment by counsel for grounds that are not acceptable. Actually, calling a witness for cross-examination after such a lengthy period of time is not always commendable. It is very necessary to finish the cross-examination on the same day as the examination-in-chief. The trial may be postponed to the next day to allow for cross-examination if the witness examination drags on beyond midnight. Legally, postponing cross-examination for so long is unfathomable. The idea of a fair trial is fundamentally undermined by it. It is the responsibility of the court to ensure that the interests of society and the collective are safeguarded, in addition to the interests of the accused as prescribed by law. It is unfortunate that the practice of granting adjournments, which is really a problem, persists despite a number of rulings from this Court. For how much longer must we chant "Awake Arise"? A persistent unease is there. Consequently, we believe it is proper to send copies of the judgment to the Chief Justices of all the High Courts so that they can distribute them to the trial judges. We urge the trial judges to adhere to the principles of trial procedure and not let the defense or themselves decide when to cross-examine a witness; doing so would turn the trial into a farce and subject society as a whole to chicanery. Always keep in mind that the law cannot stand for an individual to be homeless and alone.

Preventing a miscarriage of justice due to needless adjournments is a significant responsibility placed on trial judges. Judicial officers must adhere to the aforesaid Judgment in its entirety since it is a tribute to the Justice Delivery System.

UNWARRANTED APPROACH:

The Rules of the Tamil Nadu vehicle Accident Claims Tribunal stress the need of following summary process while conducting a trial involving a vehicle accident claim. A combined examination of the Motor Vehicles Act's Sections 140, 165, 166, and 168 reveals this to be true. Unfortunately, no workable solution has been proposed so far. It is completely unreasonable to expose the witnesses to lengthy cross-examination.

When a motorist violates the conditions of their insurance policy, such as by driving without a license or badge, the witnesses in such situations are subjected to intense questioning in order to appease the insurance companies. We cannot afford to waste the valuable court time on this.

The petitioner files a claim against the vehicle's owner and insurer. The conditions of the

[7] CDJ 2015 SC 11

insurance policy are considered broken if the motorist in question did not possess a valid driver's license. Insurance firms often try to avoid responsibility in this way. Nevertheless, according to the decision of the Hon'ble Supreme Court of India in the case of Oriental Insurance Company Limited Vs Nanjappan and others[8], it is the responsibility of the insurance company to pay the claimant in the event of a policy violation. The insurance company will then be responsible for recovering the same amount from the vehicle owner.

8. Consequently, we vacate the High Court's decision and, in accordance with the ruling in Baljit Kaur's case (supra), order the insurer to pay the amount of compensation determined by the Tribunal to the respondent-claimants no later than three months from today. This amount was not subject to dispute. The insurer is exempt from the need to initiate legal proceedings in order to collect the same from the insured. If the owner loses their case in front of the Tribunal, the insurer may be able to start a new case in the relevant Executing Court, acting as if the disagreement had already been determined. The insured will not be paid until the vehicle's owner is notified and provides security equal to the full amount that the insurer will pay to the claimants. As collateral, you must attach the criminal's car. When needed, the Executing court might seek help from the relevant Regional Transport authority. In line with legal requirements, the Executing Court will issue suitable orders directing the insured, who is also the vehicle's owner, to pay the insurer. Executing court has the authority to order realization by sale of the securities to be provided or any other property or properties of the insured, the vehicle owner, in the event of a failure. With no ruling regarding expenses, the appeal is decided in the manner mentioned before.

A number of rulings from the Honorable Supreme Court of India and other Honorable High Courts have been based on the aforementioned decision. Now that this is in the past, the petitioner doesn't have to worry about whether or not the motorist had a legal license. The vehicle's owner, who is named as the first respondent, may choose not to challenge the case and instead have the decree issued while he is away if the driver does not have a valid or validly issued driver's license. By the time the insurance companies are ready to enforce the judgment against him, he will have already gone to court to have the decision undone.

At the same time, the petitioner will likely cross-examine the insurer's witness and try to show that the driver of the offending vehicle had a valid license during the trial proceedings when the insurer argues that the driver's license was unavailable.

Quite surprisingly, the petitioner pretends to be the vehicle's owner, mounts a defense, and tries to show that the offending driver had a valid driver's license. He even questions the witness in a way that makes it seem like the Regional Transport Officer didn't verify everything correctly.

The only purpose of cross-examining a witness, whether they are an employee of the insurance company or the transport authorities, is to protect the insurance company's interests. After conducting such an investigation, the insurance company may pursue legal action against the vehicle's owner via an execution petition if it is determined that the policy was violated due to an invalid or non-existent driver's license.

Because the petitioner completely misunderstands the insurance company's stance stated

[8] 2004 13 SCC 224

above, he often attempts to cross-examine witnesses who testify on behalf of the insurance company and stresses the driver's valid license. The court is wasting its time with this completely unnecessary matter. This is something that trial judges have the power to limit, which would unquestionably save up court time.

HOW IMPORTANT IS THE SUBSTITUTING STOPPEL IN CROSS EXAMINATION?

It is also common practice to question witnesses extensively during trials. To get to the bottom of things, that is the point of cross-examination. Do not think of it as a talent show or a game of tongue twisters for the witness. There may be instances when the witness seems to have provided fraudulent testimony. This deceit might be clearly shown when the witness first answers a question during cross-examination and then subsequently contradicts himself by providing a different response to the same question. The trial judges need to be extra careful not to ask the same questions again. But the trial judges may not be able to keep a close eye on that part when the witness is asked an indirect question that sounds like the first one.

But when the witness gives one response during questioning and then gives a different one later on during cross-examination, the lawyer should play it safe and stop right then. So, the court might infer from the evidence that the witness has changed his mind on anything that could be contested in the arguments. Regrettably, the witness is questioned further about his prior comments, his replies are contrasted, and an effort is made to convince him that he has not spoken the truth, all because he has lost sight of this element.

In such a situation, the witness may provide a new response that disproves the first two. Maybe the witness doesn't have the IQ to handle the cross-examination. Even in real cases, witnesses are tripped up by these kinds of queries, putting a heavy duty on the court to determine whether or not the witness is credible before even considering the case's merits. To put it another way, the Court would waste time that might have been better spent avoiding all of them.

When a witness is asked to testify and then gives an answer that contradicts himself, it is quite likely that he will be restrained from giving an answer that contradicts himself due to estoppel. When determining the witness's reliability, the law of estoppel is crucial. However, further cross-examination is not required to prove this; it must be presented during arguments. Therefore, the use of estoppel in evidence during cross-examination is completely unnecessary.

OBJECTIONS RAISED DURING CROSS EXAMINATION:

This is a crucial area that has to be handled. The practice of objecting to specific questions asked of a witness during cross-examination is common in civil trials. Additionally, it should be mentioned that the trial moves on by automatically recording "RECORDED WITH OBJECTION" even when no answers are provided to such objections. This is not right. Evidence recording obscures the requirements of Rule 11 of Order 18 of the Code of Civil Procedure. The following is an excerpt from Order 18, Rule 11:

3. ORDER 18 RULE 11: QUESTIONS OBJECTED TO AND ALLOWED BY COURT:

The judge is required to record the following: the question, the witness's response, the objection, the identity of the person raising it, and the court's judgment about the objection if it is allowed by the court.

Because of this, the judges must adhere to the aforementioned rule and explain why they overruled the objections in the deposition itself. For the simple reason that the next judge may not understand what the words "RECORDED WITH OBJECTION" signify when a previous judge leaves office due to retirement, transfer, or death. When the genuine nature of the objections and the rationale behind the decision to accept or deny are not documented, a miscarriage of justice may also arise in this area.

RE-EXAMINATION OF WITNESS:

Prescribed in the Code of Civil Procedure, Order 18, Rule 4 (2), is the order in which evidence must be recorded. The party presenting the evidence must be cross-examined and re-examined by either the court or an appointed commissioner, and the party initiating the examination must be examined in chief by affidavit. The court must record the witness's responses to cross-examination and re-examination in the same way as the deponent testified.

Ironically, according to Order 18, Rule 4 (2) of the Code of Civil Procedure, it is necessary to file an extra affidavit in order to prepare for chief examination in many districts. The Trial Judges are required to conduct the aforementioned process with the utmost care. The trial judge is required to personally document the evidence-taking process during re-examination in accordance with the requirements of Order 18, Rule 4 (2) of the Code of Civil Procedure, which may be found below.

4. ORDER 18 RULE 4 (2):

"The evidence (cross-examination and re-examination) of the witness in attendance, whose evidence (examination in – chief) by affidavit has been furnished to the Court shall be taken either by the Court or by the Commissioner appointed by it;"

The Trial Judges are not to allow re-examination by affidavits where the provision is explicit; rather, the evidence presented during re-examination or rebuttal must be taken down by the Courts directly.

SOME PRECAUTIONS TO TRIAL JUDGES:

Nonverbal clues such as a witness's attitude, body language, voice tone, and facial expressions are all part of what is known as "demeanor of witness" when they testify.

Here is how witnesses are to behave according to the rules of civil and criminal law:

CODE OF CIVIL PROCEDURE:

ORDER 18 RULE 12 CPC:

Remarks on demeanour of Witnesses:

"The Court may record such remarks as it thinks material respecting the demeanor of any witness while under examination"

CRIMINAL PROCEDURE CODE:

SECTION 280:

Remarks respecting demeanour of witness:

"When a presiding Judge or Magistrate has recorded the evidence ofa witness, he shall also record such remarks (if any) as he thinks material respecting the demeanour of such witness

whilst under examination"

It is the responsibility of the trial judge in both civil and criminal cases to document the witness's testimony by taking notes of their questions and answers if he or she determines that the witness is being deliberately vague or otherwise uncooperative. This will allow the appellate court to form its own judgment about the witness's demeanor during the examination. Held was the aforementioned finding.

case number 9 in the 1954 June 17th case of Amar Singh Bakhtawar Singh vs. The State[9]. This court has the authority to record any observations it deems significant about the conduct of any witness during cross-examination, as stated in Rule 12 of Order 18, Civil Procedure Code. According to the decision in Salem Advocate Bar Association vs Union Of India, an advocate commissioner may also document the demeanor in accordance with the modified Civil Procedure Code.[10]

Here are some things that a court should look at when deciding how credible a witness is, including some dos and don'ts:

Do's

- The ability of a witness to observe, remember, or communicate, as well as any biases or interests, must be taken into account by the court.
- Please make a note of any previous remarks that either support or contradict the testimony.
- Will take notice of the confession of dishonesty.
- Formal documentation is required when the witness and legal representatives from both sides are present.
- The appellate court will be able to take note of the witness's demeanor while considering his evidence, unlike the trial court, which had the chance to observe the witness's demeanor during questioning. Therefore, it is important to document the circumstances and context in which the evidence was given.

R. Palanisamy vs. State By Inspector Of Police.[11] established that, "If the trial court does not record in the deposition itself the nature of the witness's demeanor, any comment made while appreciating their evidence is merely an exercise in air." To evaluate the credibility of a witness in a court of law, this is not the proper approach.

Don'ts

Unless the defense specifically requests it, courts are not required to record the defendant's demeanor.

Witnesses' impressions on trial court judges, such as "looking awkward, hesitant, nervous, hollow, insincere, avoiding to tell the truth, and answering questions confidently in an unruffled, straightforward manner giving the true ring," are likely to fade over time, particularly when judges are busy monitoring the demeanor of witnesses in multiple cases at once. In a serial trial that drags on for a long time, with several judges taking turns recording the evidence, they become completely worthless, and the judge making the final decision

[9] AIR 1954 P H 282
[10] AIR 2005 SC 3353
[11] Unreported judgment dated 23 April, 2013,MHC

ISSN PRINT 2319 1775 Online 2320 7876
 UGC CARE Listed (Group -I) Journal Volume 11, Iss 12, 2022

may not even be able to see the witnesses' expressions.The case of Kishan Lal Gupta vs. Dujodwala Industries And Ors.[12], which was decided on February 19, 1976, reached this conclusion.

Emotions should not influence trial judges. The impartiality of the trial judge is paramount; they must refrain from showing bias by asking the defense questions.

During the course of the investigating officer's testimony, the accused's confession statement must remain unmarked. Once witnesses have admitted to believing in the confession theory, only then may the acceptable parts of the confession statement be noted.

5. CONCLUSION:

Chief witnesses can be more easily examined. But the true test for the Trial Judge comes during the cross-examination of a witness. Section 165 of the Evidence Act gives the trial judge extensive authority to maintain order in the courtroom, and it is anticipated that the judge would use this authority in accordance with the letter of the law. The purpose of taking a witness's demeanor into account in a court process is to determine whether or not the witness's testimony statement made to show or refute a factual disagreement is true and credible. Also, the plaintiff cannot hide behind his lack of legal knowledge; this is very critical. A pertinent legal maxim is "Ignorantia facti excusat, ignorantia juris non excusat," which states unequivocally that one may be forgiven for not knowing a law, but one can be excused for not knowing a fact.

When deciding cases, the legal system should use caution. Even though judges use their discretion according to the specifics of each case and their own best judgment, they still have a responsibility to caution the parties involved that a miscarriage of justice could occur if they misunderstand the law. However, there is a great deal more on the shoulders of a litigant who goes to court. A attentive and deliberate approach towards the remedy sought by the claimant is required. To remind litigants of their obligation, the legal maxim "Vigilantibus non dormientibus jura subvenient" states. Litigants are required by the Courts of Justice to be very careful and vigilant throughout the litigation process. According to the aforementioned dictum, the law will protect the rights of the watchful but will do little to assist the sluggish. Miscarriages of justice are preventable, and everyone involved has a responsibility to use the Justice Delivery System correctly.

REFERENCES

1. Amar Singh Bakhtawar Singh vs. The State. (1954). *Amar Singh Bakhtawar Singh vs. The State*. AIR 1954 P H 282.
2. Oriental Insurance Company Limited vs. Nanjappan and Others. (2004). *Oriental Insurance Company Limited vs. Nanjappan and Others*. 2004 13 SCC 224.
3. Rasiklal Manikchand Dhariwal vs. Mss Food Products. (2012). *Rasiklal Manikchand Dhariwal vs. Mss Food Products*. 2012 2 SCC 196.
4. Salem Advocate Bar Association vs. Union of India. (2005). *Salem Advocate Bar Association vs. Union of India*. AIR 2005 SC 3353.
5. K.K. Velusamy vs. N. Palanisamy. (2011). *K.K. Velusamy vs. N. Palanisamy*. 2011(2) R.C.R.(Civil) 875: 2011(3) Recent Apex Judgments (R.A.J.) 83: (2011) 11 SCC 275.

[12] ILR 1976 Delhi 442

ISSN PRINT 2319 1775 Online 2320 7876
, UGC CARE Listed (Group -I) Journal Volume 11, Iss 12, 2022

6. Vadiraj Naggappa Vernekar vs. Sharadchandra Prabhakar Gogate. (2009). *Vadiraj Naggappa Vernekar vs. Sharadchandra Prabhakar Gogate*. 2009 4 SCC 410.
7. Vinoth Kumar vs. State of Punjab. (2015). *Vinoth Kumar vs. State of Punjab*. CDJ 2015 SC 11.
8. Kishan Lal Gupta vs. Dujodwala Industries And Others. (1976). *Kishan Lal Gupta vs. Dujodwala Industries And Others*. ILR 1976 Delhi 442.