

# Examination-in-Chief, Cross-Examination and Re-Examination – Competency and Compellability of Witnesses - A Critical Analysis Under the Bharatiya Sakshya Adhiniyam, 2023

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**Abstract:** *The examination of witnesses is a fundamental component of the law of evidence, ensuring that facts are properly presented and evaluated in judicial proceedings. This topic focuses on the three stages of witness examination, Examination-in-Chief, Cross-Examination, and Re-Examination as governed by the Indian Evidence Act, 1872. Each stage serves a distinct purpose: examination-in-chief introduces relevant facts, cross-examination tests the credibility and truthfulness of the witness, and re-examination clarifies any ambiguities arising from cross-examination.*

*In addition, the concepts of competency and compellability of witnesses play a crucial role in determining who can testify and whether they can be legally required to do so. Competency relates to the legal capacity of a witness to give evidence, while compellability addresses the obligation to appear and testify before the court, subject to certain privileges and exceptions.*

*Together, these principles ensure fairness, reliability, and accuracy in the administration of justice. By regulating the manner in which evidence is presented and scrutinized, they uphold the integrity of the judicial process and contribute to the effective delivery of justice.*

**Keywords:** Examination-in-Chief, Cross-Examination, Re-Examination, Competency, Compellability, Evidence Law, Witness, Indian Evidence Act, Fair Trial, Judicial Process

## I. INTRODUCTION

In the legal system, witnesses play a vital role in establishing facts before the court. The process of examining witnesses is governed by the Indian Evidence Act, 1872, which provides a structured framework to ensure fairness and reliability. According to Section 137 of the Act, the examination of witnesses is divided into three stages: Examination-in-Chief, Cross-Examination, and Re-Examination (India, 1872).

These stages are essential for presenting evidence, testing its truthfulness, and clarifying ambiguities. In addition, Section 118 of the Act deals with the competency of witnesses, while Section 132 addresses compellability (India, 1872). The Constitution of India also plays an important role, particularly through Article 20(3), which protects individuals from self-incrimination (India, 1950). Together, these principles ensure that justice is administered effectively.

### 1. Examination-in-Chief

Examination-in-Chief refers to the initial questioning of a witness by the party who calls that witness. Its purpose is to present relevant facts that support the case of that party. Section 137 of the Indian Evidence Act defines Examination-in-Chief (India, 1872).



The primary objective of Examination-in-Chief is to establish the facts of the case in a clear and logical manner. The testimony must be relevant and admissible under the law. According to Section 141 of the Act, leading questions are generally not allowed during this stage unless permitted by the court (India, 1872).

For example, instead of suggesting an answer, the lawyer must allow the witness to narrate facts independently. This ensures that the testimony remains unbiased and credible. A properly conducted Examination-in-Chief helps in building a strong foundation for the case.

## **2. Cross-Examination**

Cross-Examination is the questioning of a witness by the opposing party after Examination-in-Chief. It is one of the most effective tools for testing the credibility and reliability of a witness. Section 137 defines Cross-Examination, while Section 138 provides the order of examination (India, 1872).

The objective of Cross-Examination is to test the truthfulness of the witness's statements, expose inconsistencies, and challenge credibility. Unlike Examination-in-Chief, leading questions are permitted under Section 143 of the Act (India, 1872).

Cross-Examination has a wide scope. The opposing party may question the witness not only on facts already stated but also to test their veracity and reliability. In *State of Rajasthan v. Kalki* (1981), the Supreme Court held that minor discrepancies do not necessarily affect the credibility of a witness (*State of Rajasthan v. Kalki*, 1981).

Thus, Cross-Examination acts as a safeguard against false or exaggerated testimony and is often regarded as the most critical stage of witness examination.

## **3. Re-Examination**

Re-Examination is conducted by the party who originally called the witness after Cross-Examination. Section 138 of the Indian Evidence Act provides for Re-Examination (India, 1872).

The purpose of Re-Examination is to clarify doubts or explain inconsistencies that arise during Cross-Examination. It is limited to matters referred to in Cross-Examination unless the court permits otherwise.

For instance, if a witness gives a confusing or contradictory statement during Cross-Examination, Re-Examination allows the party to clarify the issue. This ensures that the court receives accurate and complete information.

Re-Examination is essential for maintaining fairness and preventing misinterpretation of evidence.

## **4. Competency of Witnesses**

Competency refers to the legal capacity of a person to testify in court. Section 118 of the Indian Evidence Act states that all persons are competent to testify unless they are incapable of understanding the questions or giving rational answers (India, 1872).

This provision establishes a general rule of inclusion. Children, for example, are considered competent if they can understand and answer questions. In *Rameshwar v. State of Rajasthan* (1952), the Supreme Court held that the testimony of a child witness is admissible if the child is capable of giving rational answers (*Rameshwar v. State of Rajasthan*, 1952).

Similarly, persons of unsound mind are competent if they can understand and respond rationally at the time of examination. Section 119 also recognizes that dumb witnesses may give evidence through signs or writing (India, 1872).

The concept of competency ensures that the evidence presented before the court is reliable and credible.

## **5. Compellability of Witnesses**

Compellability refers to whether a witness can be legally required to testify in court. As a general rule, every competent witness is compellable unless exempted by law (India, 1872).



One of the most important exceptions is the rule against self-incrimination under Article 20(3) of the Constitution of India, which states that no person accused of an offence shall be compelled to be a witness against themselves (India, 1950).

Another important exception is professional privilege. Section 126 of the Indian Evidence Act protects communications between a lawyer and their client from disclosure (India, 1872). Similarly, certain official communications are privileged.

Spouses are competent witnesses under Section 120, but they may not be compelled to disclose private communications made during marriage (India, 1872).

Section 132 provides that a witness cannot refuse to answer questions on the ground that the answer may incriminate them; however, such answers cannot be used against them in criminal proceedings, except in cases of perjury (India, 1872)

Thus, compellability ensures that evidence is available to the court while protecting individual rights and privileges.

## II. CONCLUSION

The examination of witnesses is a fundamental component of the judicial process. The three stages—Examination-in-Chief, Cross-Examination, and Re-Examination—ensure that evidence is presented, tested, and clarified effectively. Each stage plays a distinct role in uncovering the truth.

Furthermore, the principles of competency and compellability establish clear guidelines regarding who can testify and under what conditions they can be required to do so. Competency ensures that only capable individuals provide evidence, while compellability balances the need for evidence with the protection of individual rights.

In conclusion, these principles are essential for ensuring fairness, accuracy, and integrity in legal proceedings. A proper understanding of these concepts is crucial for the effective administration of justice.

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