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# Cross Examination: The Art and the Relevance of it

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## ABSTRACT

*One of the most important sections of any trial is the cross-examination of the witnesses. Without cross-examining a witness, his statement is incomplete and the trial cannot be concluded. While its importance is prime in any trial, it is pertinent to understand how to perfect the art of cross-examination. Below is a brief account of the relevance, objectives and the nuances associated with the art of cross-examination.*

## I. INTRODUCTION

As acknowledged by many advocates and legal writers, it is pertinent to reiterate here how important and tricky the art of cross examination is. Cross examination is a tool available to the advocates to determine before the court whether a witness is lying to the court or not. One of the most imperative part of any trial, whether civil or criminal, is the art of cross examination. Without an effective and flawless cross-examination of the witnesses, a trial is incomplete in its true sense. While the said art cannot be explained or taught in the form of pointers, many legal writers have made an effort to teach the art of cross-examination to the budding lawyers<sup>2</sup>. Along with advocates and legal jurists, various judges have reiterated the importance of cross examination in a trial in several judgments. Divan J. in the case of *State of Gujarat v. Hiralal Devji*<sup>3</sup> observed that it is the duty of the Court of to make an advocate familiar with s. 145, Indian Evidence Act and draw his attention to the importance and relevance of cross-examination, to avoid any inconsistencies in a trial. In the further sections, let us go through the relevance of cross-examination and the nuances associated with it.

## II. CROSS EXAMINATION: MEANING AND RELEVANCE

Chapter X of the Evidence act deals with the examination of a witness. The order in which any witness is examined is Examination in chief → Cross Examination → Re-examination. Once the examination in chief is concluded, the objective behind the cross-examination is to point out the inconsistencies in the statement of the witness. Cross examination of a witness is

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<sup>2</sup> David Paul Brown, *Golden Rules for the Examination of Witnesses*, <https://www.scribd.com/document/320535502/PAUL-BROWN-S-GOLDEN-RULES-docx>.

<sup>3</sup>1963 SCC OnLine Guj 32.

referred to as art by many advocates, primarily because there are no fixed rules that determine how a cross examination needs to be conducted. It is only the competence and the caliber of the advocate that determines the effectiveness of a cross examination. While it is next to impossible to reduce the art of Cross Examination into a set of rules, however David Paul Brown, an advocate at the Bar of Philadelphia, enumerated a set of 9 rules, which he called “the Golden rules for the Examination of Witnesses”<sup>4</sup>. Brown has emphasized on the alertness and observation skills of an advocate. While he recommends a lawyer to act like “thunderbolt to a liar”, he also advises to maintain your dignity as an advocate in the court of law. Furthermore, Mr. Ram Jethmalani and Mr. Majid Menon have also shown their concern over the dying art of cross examination in the present times, and how young lawyers must observe and learn from good cross-examiners, in their interviews with MyLaw<sup>5</sup>.

Now, let us note the objectives of cross-examination in a trial. One of the primary objectives of this art is to point out contradictions and point out inconsistencies in the statements of different witnesses during a trial. Most importantly, in criminal trials, where the guilt is to be proven beyond reasonable doubt, a small inconsistency in the statements may win the defence their acquittal. The inconsistencies talked about here could be the contradictions between the statement made to the police<sup>6</sup>, and the statement made before the court during examination-in-chief<sup>7</sup>. Another objective of cross examination would be to point out inconsistencies between the evidence recorded in the chargesheet made by the police and the examination in chief of the witness. The relevance of point out contradictions can be best understood by taking a look at the case of *State of Madhya Pradesh v. BanshilalBehari*<sup>8</sup>, where a statement made by a witness as to seeing the accused holding a sword through the body of the victim was nowhere to be found in his statement to the police. It was merely on this inconsistency that the accused was acquitted.

### III. PERFECTING THE ART OF CROSS-EXAMINATION

As already mentioned above, Mr. David Paul Brown, an advocate at the Philadelphia bar has enumerated a set of 8 rules that are said to be the crux of perfecting the art of cross-examination<sup>9</sup>. First and the foremost, it is necessary that the advocate cross-examining a

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<sup>4</sup> Supra note 1.

<sup>5</sup> MyLaw, “The Art of Cross Examination is dead”, Dec 21, 2010, <https://www.youtube.com/watch?v=qIs9RutkI9o>; MyLaw, “Good cross-examiners should be carefully watched”, Jan 11, 2011, <https://www.youtube.com/watch?v=-aL-geqNJhY>.

<sup>6</sup> Section 161, Cr.P.C.

<sup>7</sup> Section 137, Indian Evidence Act, 1872.

<sup>8</sup> 1957 SCC OnLine MP 83.

<sup>9</sup> Supra note 1.

witness must thoroughly study the case file. The art of cross examination requires the advocate to know each and every nuance of the case to perfection. Further, it is important that the advocate doesn't repeat facts which are against his client. This will not only highlight the facts again in the cross-examination but will also defeat the objective of pointing out the inconsistencies during a cross-examination. Brown also suggests that one should only ask questions one knows the answers to. That is to say that unpredictable answers by the witness may lead the conversation to an entirely different and unpredictable track which may ruin the case.

It is further pertinent to mention here that the art of cross examination is not only limited to the courtroom but envisages a vast amount of hard work outside of the courtroom too. One of the primary responsibilities of an advocate is to interview each and every person who is known to know the facts of the case<sup>10</sup>. One of the reasons behind this exercise is to know the facts which are not revealed in the chargesheet, and another reason is to predict the answers of the witnesses. While on the subject, it would be relevant to mention Francis L. Wellman and his book 'The Art of Cross Examination'<sup>11</sup>. The book is an exhaustive guide on the relevance, methods and objectives of cross-examination. Chapter X, dealing with some famous cross-examiners and their methods of cross-examination gives a deep understanding of how some famous cross examiners have perfected the art by channelizing their skill of interacting with people and their charismatic personalities into being one of the greatest cross-examiners of all times<sup>12</sup>.

#### **IV. CASE STUDY: CROSS EXAMINATION BY MR. RAM JETHMALANI IN SOME IMPORTANT CASES**

Without a doubt, the first case that deserves to be mentioned here is the infamous Nanavati case<sup>13</sup>. Jethmalani's remarkable skill of cross-examination in Nanavati as the assistant of prosecution lawyer not only brought him fame but also lead to the conviction of the accused in the present case<sup>14</sup>. While ram was only assisting the prosecution lawyer, he left no stone unturned to prepare a flawless series of questions for the cross-examination of the accused. Every person who belongs to the field litigation knows how irrelevant an advocate assisting

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<sup>10</sup>Robert MacFarlane, Fundamentals of the Art of Cross-Examination, *Bereskin & Parr LLP*, [http://www.cba.org/cba/cle/PDF/ADVO11\\_MacFarlane\\_Paper.pdf](http://www.cba.org/cba/cle/PDF/ADVO11_MacFarlane_Paper.pdf).

<sup>11</sup>Francis L. Wellman, *The Art of Cross-Examination*, *the Macmillan Company*, New York (2012), [https://www.gutenberg.org/files/40781/40781-h/40781-h.htm#Page\\_145](https://www.gutenberg.org/files/40781/40781-h/40781-h.htm#Page_145).

<sup>12</sup>*Id* at 145.

<sup>13</sup>*K.M. Nanavati v. The State of Bombay*, 1961 AIR 112, 1961 SCR (1) 497.

<sup>14</sup>Susan Adelman, How Ram Jethmalani had an Officer Jailed and a Sadhu Put Away, *Scroll.in*, Jan 10, 2015, <https://scroll.in/article/699536/how-ram-jethmalani-had-an-officer-jailed-and-a-sadhu-put-away>.

the prosecution can be in a trial, having no locus of his own. Despite the given conditions, Ram not only proved his caliber as an advocate but also as an expert cross-examiner.

Further in line is the *Indira Nagpal* case<sup>15</sup>, wherein Mr. Jethmalani was appointed the public prosecutor. Charges of abduction were levelled against a sadhu who seduced young women into giving him sex and money. Despite the victim being entirely under subjugation of the accused (the sadhu), the accused was convicted of the offence. With the cunning presence of mind and wishful thinking, Ram used his skill of cross-examination to serve the purpose of justice. The present case is a perfect example of the art of cross-examination not being limited to the courtroom. While the prime victim was not ready to say a word against the accused, Ram went behind the case and found evidence against the accused. The art of cross-examination as discussed before is not only limited to cross-questioning the witness in the courtroom, but also envisages under it interviewing people outside of the court to know facts which are not apparent from the case file on record.

Last, but not the least, the cross examination of Mr. Arun Jaitley by Mr. Ram Jethmalani is a story worth mentioning here. Involving two of the greatest lawyers of their time, the story was widely covered by media. When Arun Jaitley sued Arvind Kejriwal for defamation, he was cross-examined by Ram Jethmalani at various occasions at the Delhi High Court. The cross-examination was so powerful and intense, that a joke run in the media how Arun Jaitley should rather file a defamation case against Ram for defaming him badly during the cross examination<sup>16</sup>.

## V. CONCLUSION AND DISCUSSION

In conclusion, one of the most important things to understand, which has been reiterated by many legal practitioners all across the globe, and also discussed above, is that cross-examination is an art and can only be learnt through practice and observation. While observing and reading about the expert cross-examiners is of prime importance, it is also necessary to practice the art. Like any other art form, cross-examination is also a nuanced concept and requires deep study and focus. One of the primary objectives of any cross-examination is to bring to light the inconsistencies in the statement of the witness to the police and the statement before the court. Furthermore, any inconsistencies brought forward through the medium of cross-examination can totally change the course of any trial. While conducting a cross-examination, one also needs to consider the qualities of a lawyer and exercise them throughout

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<sup>15</sup> Susan Adelman, *Rebel: A Biography of Ram Jethmalani*, Penguin Random House, India (2017).

<sup>16</sup> Praveen Donthi, Contempt in Court: Notes from Jethmalani's face off with Jaitley, *The Caravan*, 24 Mar, 2017, <https://caravanmagazine.in/vantage/jethmalani-jaitley-ddca-case-hearing-rivalry>.

the practice. The golden rules mentioned in the previous sections can take someone a long way in the practice of law. Focus, persistence, diligence, observant, etc. are some of the qualities required to be a great cross-examiner. Last but not the least, from various examples discussed above, it is worth mentioning here that one of the primary qualities that a good cross-examiner must possess is that of intimidation. One has to be intimidating to the witness to bring the truth before the court.

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## VI. BIBLIOGRAPHY

### Statutes:

- The Code of Criminal Procedure, 1974.
- The Indian Evidence Act, 1872.
- The Indian Penal Code, 1860.

### Precedents:

- *K.M. Nanavati v. The State of Bombay*, 1961 AIR 112, 1961 SCR (1) 497.
- *State of Gujarat v. Hiralal Devji*, 1963 SCC OnLine Guj 32.
- *State of Madhya Pradesh v. Banshilal Behari*, 1957 SCC OnLine MP 83.

### Books:

- Susan Adelman, *Rebel: A Biography of Ram Jethmalani*, Penguin Random House, India (2017).
- Francis L. Wellman, *the Art of Cross-Examination*, the Macmillan Company, New York (2012).

### Articles:

- Praveen Donthi, *Contempt in Court: Notes from Jethmalani's face off with Jaitley*, *The Caravan*, 24 Mar, 2017, <https://caravanmagazine.in/vantage/jethmalani-jaitley-ddca-case-hearing-rivalry>.
- Susan Adelman, *How Ram Jethmalani had an Officer Jailed and a Sadhu Put Away*, *Scroll.in*, Jan 10, 2015, <https://scroll.in/article/699536/how-ram-jethmalani-had-an-officer-jailed-and-a-sadhu-put-away>.
- Robert MacFarlane, *Fundamentals of the Art of Cross-Examination*, *Bereskin & Parr LLP*, [http://www.cba.org/cba/cle/PDF/ADVO11\\_MacFarlane\\_Paper.pdf](http://www.cba.org/cba/cle/PDF/ADVO11_MacFarlane_Paper.pdf).
- MyLaw, "The Art of Cross Examination is dead", Dec 21, 2010, <https://www.youtube.com/watch?v=qls9RutkI9o>; MyLaw, "Good cross-examiners should be carefully watched", Jan 11, 2011, <https://www.youtube.com/watch?v=-aL-geqNJhY>.
- David Paul Brown, *Golden Rules for the Examination of Witnesses*, <https://www.scribd.com/document/320535502/PAUL-BROWN-S-GOLDEN-RULES-docx>.

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