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VISHAKA & ORS. V. STATE OF RAJASTHAN. AND **PROCESS OF EXAMINATION OF WITNESS**

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Subject: Law of Evidence

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PROJECT TOPIC 1

1. PREFACE

In India, there has always been a problem with sexual harassment, and many cases are recorded yearly. Women have experienced harassment in a variety of ways, including rape, molestation, sexual remarks, and groping. However, it wasn't until the 1990s that workplace sexual harassment came to light and started to be addressed by the legal system. But the legal system didn't begin to take notice of or address workplace sexual harassment until the 1990s.

Prior to the historic Vishakha case, sexual harassment in India lacked a clear definition and legal prohibition. But there were also provisions in the Indian Penal Code and the Indian Evidence Act that dealt with sexual offences like sexual harassment. Nevertheless, no guidelines or protocols were provided by this legislation to address allegations of sexual harassment in the workplace.

In 1997, the Supreme Court of India rendered a significant ruling in the case of Vishakha and Others v. State of Rajasthan. A code of conduct, the establishment of a complaints commission, and the provision of awareness and training initiatives were all part of the Vishakha Guidelines. These regulations were later added by the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013. It also underlined the need for women's rights to be defended in India and for greater gender equality.

2. LAW'S APPLIED IN THE CASE

The Constitution of India, 1950

- ✓ **Article 14¹** - "The State shall not deny to any person equality before law or the equal protection of the laws within the territory of India".
- ✓ **Article 15 - (1)** The State shall not discriminate against any citizen on the grounds only of religion, race, caste, sex, place of birth or any of them.
 - (2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, restriction or condition with regard to -
 - [a] access to shops, public restaurants, hotels and places of public entertainment; or

¹ Ins. by the Constitution (Twenty-fourth Amendment) Act, 1971, s. 2

[b] The use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.

(3) Nothing in this article shall prevent the State from making any special provision for women and children.

(4)² Nothing in this article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Schedule Castes and the Scheduled Tribes.

(5)³ Nothing in this Article or sub-clause (1) of Article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or The Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of Article 30.

- ✓ **Article 19 (1) (g)**⁴ - To practice any profession, or to carry on any Occupation, Trade or Businesses.
- ✓ **Article 21** - No person shall be deprived of his life or personal liberty except according to procedure established by law.

3. INTRODUCTION

The landmark ruling in the Vishakha case has had a profound effect on women's rights and job security in Indian law. A group of social workers filed a Public Interest Litigation (PIL) in 1992, asking the Supreme Court of India to establish guidelines to stop sexual harassment of women at work. Following a horrifying episode of sexual assault on a social worker in Rajasthan, the case gained momentum.

In its 1997 decision in the Vishakha case, the Supreme Court defined workplace sexual harassment and set guidelines for dealing with it. Making the workplace a safe place for women to work and ensuring their safety there was a significant step in the right direction. Since then,

² Added by the Constitution (First Amendment) Act, 1951, s. 2.

³ Ins. by the Constitution (Ninety-third Amendment) Act, 2005, s. 2 (w.e.f. 20-1-2006).

⁴ Ins. by the Constitution (Forty-fourth Amendment) Act, 1978, s. 2 (w.e.f. 20-6-1979).

the case has influenced Indian society profoundly and shaped the discourse surrounding workplace sexual harassment.

4. FACTS OF THE CASE⁵

In 1985, Bhanwari Devi, a resident of Bhatari, Rajasthan, began working for the government of Rajasthan's Women's Development Project (WDP). Her job title was "Saathin," which translates to "friend" in Hindi.

As part of her work in 1987, Bhanwari investigated a case involving an attempted rape of a neighboring rural woman. Her village's residents gave her their entire approval for this deed. Bhanwari took up a different topic in 1992 in response to the government's push against child marriage. Despite their knowledge that child marriage is prohibited, the entire village was against this campaign and showed ignorance towards it.

Meanwhile, Ram Karan Gujjar's family had arranged for his young daughter to be married in this manner. Following through on her tasks, Bhanwari attempted to convince the family not to execute the marriage, but her efforts were in vain. The marriage was approved by the family.

The Deputy Superintendent of Police (DSP) and the sub-divisional officer (SDO) went and put an end to the marriage on May 5, 1992. Nonetheless, no police action was taken against the marriage, which was consummated the next day. The locals later proved that Bhanwari Devi's acts were the cause of the police inspections. As a result, Bhanwari Devi and her family were boycotted. She also lost her job amid this boycott.

On September 22, 1992, five men—Ram Sukh Gujjar, Gyarsa Gujjar, Ram Karan Gujjar, and Badri Gujjar—along with one Shravan Sharma attacked Bhanwari Devi's husband and then viciously gang-raped her in an attempt to exact revenge.

The investigation was delayed because the police made every effort to avoid making any complaints against the accused. With her unwavering resolve to obtain justice, Bhanwari Devi persevered in filing a complaint despite the harsh criticism she had received. There was a fifty-two-hour delay in the medical examination. Nevertheless, the report's examiner only highlighted

⁵ (No date) Vishaka v. State of Rajasthan & Ors. Available at: <https://judicateme.com/wp-content/uploads/2020/06/Vishaka-v.-State-of-Rajasthan-Ors..pdf> (Accessed: 12 March 2024).

the victim's age rather than any instances of rape.

All of the defendants were able to win an acquittal in the Trial Court due to a lack of evidence and with the assistance of local MLA Dhanraj Meena. However, numerous female activists and Bhanwari-supporting organisations fiercely retaliated against her acquittal. Together, these groups spoke out in favour of justice, and as a consequence, a Public Interest Litigation (PIL) was filed.

"Vishaka," a women's rights organisations, filed the PIL. Focus was placed on upholding women's fundamental rights at work in accordance with Articles 14, 15, 19, and 21 of the Indian Constitution. The necessity of shielding women from sexual harassment at work was also brought up.

5. ISSUES RAISED

- ✓ Whether Bhanwari Devi's basic rights under articles 14, 15, 19(1) (g), and 21 of the Indian Constitution were violated by the trial court's ruling in her case.
- ✓ The issue of gender equality and the problem of sexual harassment that women experience in the workplace were the other matters that the summit had to decide.
- ✓ Whether the employer is accountable or has any involvement in sexual harassment claims.

6. CASES PRESENTED BY BOTH THE PARTIES

- ✓ The petitioners contended that Bhanwari Devi was not the only woman to suffer such a horrendous crime; many other women were also victims of shame and social pressure, which prevented them from coming forward.
- ✓ The other argument was that, before to the trial, the complainant stated that, even if women file formal complaints, they are not eligible for any meaningful remedies since India lacks explicit rules or regulations pertaining to crimes like abuse of women in the office.
- ✓ The petitioner asked the court to order the Indian government to refer to specific clauses of international conventions and to establish standards governing matters such as workplace harassment of women and gender equality.
- ✓ The petitioners mainly cited the case of "Nilabati Behera v. State of Orissa," in which the court used an ICCPR article to bolster its conclusion that "an enforceable right to

compensation is not foreign to the idea of enforcement of a protected right," which is different from the private remedy in torts and falls under Article 32 of public law. Thus, there is no reason why the fundamental rights explicitly stated in the Indian Constitution which represent the core idea of gender equality in all realms of human activity cannot be interpreted using these international treaties and standards.

- ✓ The petitioner also cited "Minister for Immigration and Ethnic Affairs v. Teeh10," which established that a court may make reference to a case where there is a legal void or when a particular statute is absent with respect to a legal matter. International agreements, provided that they don't conflict with peoples' fundamental rights.

7. PETITIONER'S ARGUMENTS

The "Vishaka" organization, which was made up of several women's rights activists, non-governmental organisations, and other social activists, filed a writ petition asking for the writ of mandamus. They made the case that the offensive acts of sexual harassment committed against women at work are against the basic rights guaranteed by Articles 14, 15, 19(1) (g), and 21 of the Indian Constitution. The petitioners alerted the Honourable Court to the legal gap pertaining to the provision of a safe workplace for women. They asked the Honourable Court to establish regulations aimed at stopping workplace sexual harassment.

8. RESPONDENT'S ARGUMENTS

In this matter, the learned Solicitor General took an uncommon step of supporting the petitioners while appearing on behalf of the respondents (with their assent). The respondent helped the Honourable Court formulate the rules for preventing sexual harassment and come up with an efficient way to stop it. Fali S. Nariman, the Honourable Court's amicus curiae, together with Ms. Meenakshi and Ms. Naina Kapur, assisted the Honorable Court in handling the aforementioned matter.

9. RULES APPLIED

- ✓ Article 14: The Right to Equality
- ✓ Article 15: The Right to Non-Discrimination
- ✓ Article 19 (1) (g): The Right to practice one's Profession
- ✓ Article 21 (21): Right to Life

Prior to this case, there were no laws in India that addressed cases of sexual harassment of women in the workplace. As a result, the Supreme Court also cited specific provisions found in international conventions that India has ratified, including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

- ✓ Convention on the Elimination of all Forms of Discrimination against Women (CEDAW).

In order to guarantee that men and women have the same rights, namely the inalienable right to work, States Parties should take all reasonable steps to eradicate discrimination against women in the workplace, according to **Article 11**.

States Parties agree to take all national actions required to achieve the full realization of the rights recognized in the current Convention, according to **Article 24**.

10. DECISION OF THE SUPREME COURT⁶

A three-judge panel led by Justice J.S. Verma heard this matter. The panel concluded that although "gender equality" is not specifically defined in any law or article, it is covered by articles 14, 19, and 21.

Any form of sexual harassment of a woman at work is against fundamental human rights; in particular, it contradicts the idea of "gender equality," which in turn violates the fundamental rights of women as stated above and protected by the Indian Constitution. Article 19(1) (g) of the Indian Constitution guarantees citizens the freedom to practice whatever profession they choose, as well as to engage in any trade, business, or employment. These abuses of their fundamental rights are also against this provision. Specifically, this right imposes a legal duty on the employer to guarantee a safe work environment for female employees and to prevent discrimination against female employees. The court observed that Right to Life, as embodied under article 21 included the right to live with dignity.

The petitioner and the Supreme Court agreed that setting down rules and conventions would be the only effective means of preventing crimes against women that would take place in the workplace. The Indian government and the State of Rajasthan were instructed by the court to

⁶ A. I. R 1997 S. C. 3011, 1997 6 SSC 241, JT 1997 (7) SC 384

make sure that the rules established by the court are followed to the greatest extent feasible in all workplaces.

When this case came before the Supreme Court in 1997, India had neither legislation governing crimes against women at work nor legislation addressing concerns related to "Gender Equality." The Supreme Court concluded in this case that, in the absence of legislation, the established rules and norms should be regarded as law for the purposes for which it exercised its authority under articles 141 and 32 of the Indian Constitution. The Court also declared that until suitable legislation is passed, these rules will be deemed to constitute the law. The state exercised its authority granted to it under Article 51(c) when read in conjunction with Article 253 with regard to Entry 14 of the Union List of the Seventh Schedule of the Constitution to establish guidelines and norms, and it may refer to international conventions to the extent that they do not violate any provisions under domestic law.

The Supreme Court believed that by creating these standards and guidelines, it would be fulfilling its obligations both domestically to Indian citizens and internationally. The Beijing Statement of the Principles of the Independence of the Judiciary in the LAWASIA area is endorsed by India. These claims place a duty on a nation's judiciary to operate independently and uphold the minimal criteria necessary for it to function effectively and efficiently.

11. CRITICAL ANALYSIS OF THE CASE

In 1997, when Bhanwari Devi's case first arose, patriarchal attitudes that dominated the culture were the primary cause of women's subordination to males at that time. Additionally, this was one of the causes of there were no legal framework safeguarding women against discrimination in the workplace. Aside from this, there was no law prohibiting men from pestering women sexually in the workplace. Many women decide not to go to work because they are afraid of being sexually harassed by their male coworkers or facing discrimination at work.

In the case of "Vishaka v. State of Rajasthan & Ors," the court collaborated with the union, India, and the State of Rajasthan to develop the well-known "Vishaka Guidelines," which are intended to reduce workplace violence against women corresponding location of employment.

12. NCRB REPORT 2022: CRIME AGAINST WOMENS

District wise IPC Crimes - 2022	Assault on Women with Intent to Outrage her Modesty (Sec.354 IPC) (Total) (Col.36+Col.37+Col42 to 44)	Sexual Harassment (Sec.354A IPC) (Total) Col 38 to 41)	Rape (Sec.376 IPC)	UNNATURAL OFFENCES (SEC. 377 IPC)
State: Maharashtra				
Ahmednagar	707	97	112	4
Akola	218	72	28	5
Amravati Commr.	262	67	55	0
Amravati Rural	174	58	35	5
Aurangabad Commr.	240	50	49	7
Aurangabad Rural	215	93	31	0
Beed	267	97	52	0
Bhandara	75	35	39	0
Buldhana	321	170	51	6
Chandrapur	221	65	38	0
Dhule	92	0	16	0
Gadchiroli	38	14	17	0
Gondia	94	18	36	3
Hingoli	95	38	15	0
Jalgaon	274	72	41	4
Jalna	358	114	54	0
Kolhapur	282	40	50	2
Latur	159	25	32	7
Mumbai Commr.	1859	335	370	12

Mumbai Railway	78	31	1	1
Nagpur Commr.	230	61	115	13
Nagpur Railway	6	1	0	0
Nagpur Rural	93	14	35	2
Nanded	196	35	39	0
Nandurbar	55	14	17	0
Nasik Commr.	91	0	32	1
Nasik Rural	233	96	34	2
Navi Mumbai	200	51	105	1
Osmanabad	158	68	43	2
Palghar	68	8	35	2
Parbhani	107	25	26	3
Pune Commr.	474	157	305	11
Pune Railway	4	3	1	0
Pune Rural	594	70	110	8
Raigad	105	29	33	5
Ratnagiri	47	11	14	0
Sangli	196	64	67	4
Satara	252	94	57	2
Sindhudurg	68	39	8	0
Solapur Commr.	75	16	22	0
Solapur Rural	389	98	74	4
Thane Commr.	432	105	171	13
Thane Rural	85	24	44	0
Wardha	157	58	27	2
Washim	134	31	21	3

Yavatmal	260	88	66	5
Pimpri Chinchwad City	342	116	120	17
Aurangabad Railway	10	0	1	0
Mira Bhayandar Vasai Virar Commr.	422	79	160	6
Total Districts	11512	2946	2904	162

13. VISHAKA GUIDELINES⁷

- ✓ The obligation of the employer or other accountable parties in workplaces and other establishments:

Employers and other accountable parties have a responsibility to stop or discourage sexual harassment at work and to set up the necessary processes for any necessary actions to be taken in order to resolve, settle, or prosecute such incidents.

- ✓ Definition:

For this purpose, sexual harassment includes such unwelcome sexually determined behavior (whether directly or by implication) as:

- a) physical contact and advances;
- b) a demand or request for sexual Favors;
- c) sexually coloured remarks;
- d) showing pornography;
- e) Any other unwelcome physical verbal or non-verbal conduct of sexual nature.

⁷ Lakhe, A. (2020) Case summary: Vishaka & others vs. state of Rajasthan, LawLex.Org. Available at: <https://lawlex.org/lex-bulletin/case-summary-vishaka-others-vs-state-of-rajasthan/19202> (Accessed: 12 March 2024).

When any of these acts are carried out in a way that gives rise to the victim's reasonable fear that the conduct, whether it be in a public, private, or government setting, will be detrimental to her health and safety, whether she is working for pay or volunteering her services, or both, the conduct can be dehumanizing. It is discriminatory, for example, if the woman has a good cause to think that her objections would hurt her career or job prospects, such as being hired or promoted, or if it fosters a hostile work environment. If the victim objects to the behaviour in issue or does not consent to it, negative outcomes may result.

✓ Preventive steps:

In order to stop sexual harassment, all employers and those in control of the workplace, whether in the public or private sector, should take the necessary actions. They should do the following, without limiting the application of this requirement in its entirety:

- The above-described explicit ban on sexual harassment at work should be announced, published, and disseminated in the proper channels.
- Sexual harassment should be prohibited by rules and regulations governing behavior and discipline in government and public sector organisations. These rules and regulations should also specify the appropriate consequences for violators.
- In terms of private employers, the Industrial Employment (Standing Orders) Act, 1946 requires that the aforementioned restrictions be included in standing orders.
- To further ensure that there is no hostile environment towards women at work, appropriate work conditions should be provided in respect of work, leisure, health, and hygiene. Additionally, no employee woman should have reasonable grounds to believe that she is disadvantaged in connection with her employment.

✓ Criminal proceedings:

The employer must take legal action by filing a complaint with the relevant authority in cases where the conduct qualifies as a specified offence under the Indian Penal Code or any other legislation.

It should specifically make sure that witnesses or victims of sexual harassment are not mistreated or subjected to discrimination during the resolution of complaints. Sexual harassment victims ought to be able to request their own transfer or the transfer of the harasser.

✓ Disciplinary Action:

The employer should take appropriate disciplinary action in line with the applicable service rules where the conduct qualifies as misconduct in employment as specified by those rules.

✓ Complaint process:

In order to address the victim's complaint, the employer's organisation should set up a suitable complaint process, regardless of whether the behaviour in question violates the law or the service regulations. A complaint procedure like this should guarantee that issues are handled promptly.

✓ Complaint's committee

As mentioned in above, the complaint procedure should be sufficient to offer a Complaints Committee, a specific counsellor, or other support service as needed, including maintaining confidentiality.

At least half of the members of the Complaints Committee should be female, and the committee should be led by a woman. Additionally, in order to guard against any potential pressure or influence from higher up, the Complaints Committee need to include an outside party, such as an NGO or other organization with experience in dealing with sexual harassment cases.

The government department in question must receive an annual report from the Complaints Committee detailing the complaints received and the actions taken by them. Employers and the person in charge will also report to the government department on compliance with the aforementioned criteria, including the reports from the Complaints Committee.

✓ Workers' Initiative:

Sexual harassment concerns should be openly discussed at employer-employee meetings and in workers' meetings, as well as in other suitable forums.

✓ Awareness

In order to raise awareness of the rights of female employees in this respect, it is especially important to properly and conspicuously tell them of the rules (and any applicable laws that may be implemented on the issue).

- ✓ When an outsider or third party commits an act or omission that results in sexual harassment, the employer and person in charge shall do everything within their power to help the victim and provide preventative measures.
- ✓ It is urged that the Central and State Governments take into consideration enacting appropriate measures, such as legislation, to guarantee that the employers in the Private Sector adhere to the rules established by this decision.
- ✓ The 1993 Protection of Human Rights Act's rights will not be infringed upon by these rules.

14. CONCLSION

India is a signatory to numerous international conventions that prohibit sexual harassment of women. In addition, India has enacted laws to curb the offence of sexual harassment of women, but the failure to implement these laws effectively has only made the situation worse. Women in India have long been victims of various offences, one of which being sexual harassment at the workplace.

It took the government seventeen years after developing the Guidelines in 1997 to enact legislation making it illegal for anybody to harass a woman sexually at work. The Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act, 2013 was adopted in 2013 with the President of India's assent. Preventing workplace sexual harassment and fostering an environment where female workers feel comfortable working are the primary goals of this assistance.

The necessity of the hour is to raise awareness in society rather than placing the blame on the woman and supposing that her negligence caused the situation to occur. In the rural areas of India, where males still view women as their property, this information is desperately required. The government of India should collaborate closely with non-governmental organisations to launch programmes teaching women how to defend themselves. In the end, employers—aside from the government—should support gender equality and ensure that a female employee working under their supervision does so with dignity in a setting that welcomes her and makes her feel like she belongs.

PROJECT TOPIC 2

PROCESS OF EXAMINATION

1. INTRODUCTION

The legal system's essential elements of witness questioning and cross-examination are firmly anchored in the pursuit of justice and the administration of truth. Witness testimony, which offers firsthand recollections and insights into the events under investigation, frequently functions as a crucial source of evidence. Attorneys can present their position during the examination phase, and during the cross-examination phase, there is an opportunity to refute the veracity and correctness of witness testimony. Together, they create a dynamic interaction that aims to reveal contradictions, extract trustworthy information, and sway jurors' and judges' verdicts.

The presenting party can carefully craft the story of the case through witness examination. In order to obtain relevant information, opinions, or expert analysis, and to prove the facts supporting their client's case, attorneys must structure their questions expertly. By examining witness information, experiences, and perceptions, the examination helps to provide a complete picture of the events under investigation. It also provides a way to provide evidence that could support or refute witness testimony, which could influence how the case is handled.

The cross-examination, which comes after the direct examination, is an important part of the process for questioning the witness's truthfulness, evaluating their reliability, and exposing any biases or contradictions. In order to deliberately undermine the witness's testimony and look for flaws in it, the opposing counsel uses a variety of tactics. Cross-examination requires striking a careful balance between the obligation to uphold fairness and respect for the witness's rights and the right to challenge.

The Indian Evidence Act, 1872, expressly addresses witness questioning and cross-examination in Sections 135 to 165. Each component will be thoroughly explained in this essay, along with any related pertinent case laws.

1. ADMISSIBILITY OF EVIDENCE

The word "evidence" comes from the Latin word "evidere," which means to verify or plainly demonstrate proof of anything. Therefore, before delving into the admissibility of evidence, we must first understand what evidence is. Evidence is the quality of being obvious, especially when

it comes to items that substantiate or offer proof.

In accordance with Sir Blackstone's definition, "Evidence" includes any and all aspects that elucidate, explain, or prove the veracity of known facts or grounds of contention, regardless of whether they provide support to one side or the other.

The word "evidence" in Indian law refers to any document or media that is used in court to persuade and establish pertinent and proper facts. It functions as a tool for convincing the court that particular facts are true.

In a similar vein, court-seen uttered utterances are considered "Evidence" under English law. It also comprises the topic of the inquiry, which needs to be related to certain facts in order for evidence to be needed. Therefore, all the components used to ascertain or prove the veracity of a claim are included in the definition of evidence in its widest sense.

The Indian Evidence Act, 1872" governs the field of evidence law in India, where a variety of evidence types are frequently presented in court.

Evidence is deemed admissible under "Section 5 of the Evidence Act, 1872" if it is pertinent to a fact under dispute. In addition, the court may question whether or not the evidence that the parties have submitted relates to a relevant fact under "Section 136 of the Act."

Put more simply, evidence must be directly connected to a fact that is significant to the case in order for it to be admitted as evidence in court. The court has the right to ask the parties if the evidence they have provided is relevant. This ensures that only evidence that is significant and pertinent to the matter at hand is considered admissible in the proceedings.

2. PROCESS OF EXAMINATION⁸

It is required of witnesses to answer relevant questions that are asked of them. A question asked to a witness ought to be pertinent to the point under dispute and should help to establish it.

⁸ Admin (2023) *Examination of witness and cross examination - legal vidhiya, Legal Vidhiya* -. Available at: <https://legalvidhiya.com/examination-of-witness-and-cross-examination/> (Accessed: 12 March 2024).

Witnesses' replies, which are properly documented, are called their testimonies. Witness examination is the process of asking the witness questions and recording their answers.

3. EXAMINATION OF THE WITNESS

When a witness is being examined, their remarks are recorded as evidence and they are questioned about pertinent facts in the case. As stated in "Section 138 of the Indian Evidence Act," this examination is broken down into three sections.

Examination-in-chief: In accordance with "Section 137 of the Act," the party who summoned the witness starts the examination-in-chief. In order to get information and facts that strengthen the party's case, the witness is questioned during this phase.

Cross-examination: Following the conclusion of the main examination, the witness may be questioned again by the opposing side. The opposing party may question the witness about their prior responses and delve into any pertinent information, not only the topics covered during the examination-in-chief, according to "Section 137 of the Act."

Re-examination: The person who summoned the witness may re-examine them if they think it's essential. The calling party may then interrogate the witness in accordance with "Section 137 of the Indian Evidence Act." Usually, re-examination is done to address issues brought up during cross-examination.

The court may order the re-examination in order to clarify points raised during the cross-examination, as per "Section 138." The opposing side has the right to further cross-examine the witness on those particular facts or issues if they come up during re-examination.

The High Court of Jammu and Kashmir held in the case of "Ghulam Rasool Khan v. Wali Khan" that cross-examination may not be necessary if the witness evidence appears to be untrustworthy at first. Therefore, if a witness withholds key information or makes untrustworthy statements, their testimony may be ignored, and cross-examining them may not be required in such circumstances.

Following the precise order specified in "Section 138" while questioning a witness is essential. so was determined that cross-examination must go first and that conducting so in any other

manner is not feasible nor appropriate in the case of "Sharadamma v. Renchamma"

4. EXAMINATION ORDER OF NON-WITNESS

"Section 139 of the Indian Evidence Act" acknowledges that a court of law may accept a variety of alternative types of evidence in addition to witness testimony. Documentary evidence is one type of this, as stated in "Section 3(2)(e) of the Act." It happens occasionally that someone is called in just to provide a paper. A person summoned to provide a document does not become a witness, as per Section 139.

To verify the document's legitimacy and validity, the individual might be questioned. On the other hand, unless they are explicitly summoned as witnesses, they cannot be subjected to cross-examination. This implies that they won't be put through the whole witness questioning and cross-examination procedure; instead, their job is restricted to producing the document and offering pertinent information about it.

Next, let's talk about "Section 140," which discusses the personality of a party to the lawsuit. "Character" describes the traits or aspects that set a person apart, especially their moral and mental faculties. It also includes one's standing in the community.

A witness who testifies on the character of a party may be subject to cross-examination under Section 140, but only following the conclusion of the "examination-in-chief" (first round of questioning). The court can evaluate the veracity and trustworthiness of the comments made by other witnesses in the case with the use of the character evidence.

5. LEADING QUESTIONS

It's crucial that leading questions are avoided by both sides when a witness is being examined, cross-examined, or re-examined. Leading inquiries are ones that imply the expected response to the individual posing the inquiry, according to "Section 141 of the Indian Evidence Act."

This rule is intended to prevent witnesses from being swayed or directed by the suggestive character of the questions, and to guarantee that they testify only on the basis of their own recollections and observations. In the event that the other side poses a leading question to the witness, one side is required to object. This argument is required because the witness ought to respond on their own initiative, depending only on their own recollection and interpretation of

the facts. Allowing leading questions would effectively indicate that the witness is receiving signals or suggestions from the questioner, which might potentially influence the witness's replies.

It's important to keep in mind that while "Section 141 of the Indian Evidence Act" prohibits it, Section 142 outlines a number of exceptions to this rule. Leading questions may be asked during the primary examination or the re-examination in compliance with "Section 142" if the court grants permission.

According to the clause, the Court may also allow leading inquiries if the facts under consideration are new, undisputed, or have already been duly proved. The "High Court of Kerala" upheld this clause in the Varkey Joseph v. State of Kerala case.

While "Section 142" does not specifically address leading questions in the course of cross-examination, "Section 143" makes it clear that such inquiries are acceptable.

It is important to remember, nevertheless, that leading questions are only permitted during examination-in-chief, cross-examination, or re-examination in the event that the other side does not object. The Court has the authority to determine whether or not to accept the leading question in the event that an objection is made. It is crucial to stress that, unless there are extraordinary circumstances, the Court of Appeals or Revision will normally not infringe upon the Court's discretion in this subject.

6. CONCLUSION

"The Indian Evidence Act, 1872" is an important piece of legislation that protects witnesses and guarantees their right to speak freely without worrying about facing consequences from the law.

Judges' interpretations of the statute have significantly improved it over time to meet changing societal requirements. Some clauses have become more applicable and useful in the current situation as a result of their interpretations. The statute has been modified as a consequence to enhance witness protection and advance a just and equitable legal system.

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