



UNIT - IV

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Indian Evidence Act

- As per Section 3 of the Indian Evidence Act, **1872**

Evidence means and includes the following:

1. All statements made before the Court by witnesses about matters of fact under investigation, which the Court permits or requires, such statements are referred to as oral evidence.
 2. All documents (including electronic records) presented for the inspection of the Court, such materials are referred to as documentary evidence.
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- The Supreme Court made the following observations on evidence, the word "**evidence**" has been used in common way in three different senses: as
 1. Equivalent to relevant
 2. As equivalent to proof and
 3. As equivalent to the material, based on which Courts conclude the existence or non-existence of disputed facts.

What is a Fact ?

- a thing that is known or proved to be true.
- information used as evidence.

Meaning of Facts

Section 3 of the Indian Evidence Act, 1872(IEA) defines **fact** as:

- Anything, state of things, or relation of things, capable of being perceived by senses (Anything you can see, hear, touch, smell, or taste)
- Any mental condition of which any person is conscious. (Any thought, feeling, or mental condition that a person is aware of.)

Relevancy of Facts

Chapter II of the IEA deals with the relevancy of facts under provisions of Section 5 - 55. The relevant facts are provided under Sections 5 - 16. The provisions discussed here under are:

Section 5 – Evidence of facts in issue and relevant facts

- Only facts directly related to the case (facts in issue) or facts connected to them (relevant facts) can be given as evidence.

Section 6 – Facts forming part of the same transaction

- Facts that happened at the same time or as part of the same incident are relevant.
- Example: Events happening before, during, or after a crime that are connected closely.

Section 7 – Facts that are the occasion, cause, or effect of facts in issue

- Facts that explain why something happened (cause), what led to it (occasion), or what happened as a result (effect) are relevant.

Relevancy of Facts

Section 8 – Motive, preparation, and conduct

- A person's reason for doing something (motive), what they did to get ready (preparation), and how they behaved before or after the act (conduct) can be used as evidence.

Section 9 – Facts that explain or introduce relevant facts

- These include things like identification, location, time, or background information that help clarify the main facts.

Section 14 – Facts showing state of mind, body, or bodily feeling

- Facts that show a person's intention, knowledge, mental condition, physical condition, or emotions are relevant.
- Example: Fear, anger, pain, or mental illness.

Expert Witness

- An expert witness is a person with **specialized knowledge** in a specific field, such as science, art, or foreign law, whose opinion is admitted as evidence in court to help the judge or jury understand complex issues.
- Under **the Indian Evidence Act, Section 45** defines an expert as someone with special knowledge, skill, or experience in fields like science, art, handwriting, finger impressions, or foreign law. The court can use the **expert's opinion** to form a conclusion on points that a layperson could not easily understand.



Expert Witness

Expert is defined under **Section 45** of the Indian Evidence Act, 1872. The court needs an expert to form an opinion upon:

- Foreign Law
- Science and Art
- Identity of Handwriting
- Identity of finger impression and
- Electronic Evidence.

Only in the expertise in the above-said fields, a person's opinion is considered to be an expert opinion. If a field not mentioned above requires an opinion, it is not considered as an expert opinion. There have been cases such as: [2]

- The disposition or temper of animals
- Colour, weight or scale of similar facts
- Age of a person
- If a man or women were intimate
- If a person was intoxicated or not

If an expert is giving an opinion, it is considered as a relevant fact for the case. An expert has devoted his time in learning a special branch of expertise and thus is specially skilled in the subject. It can include:

- Superior knowledge, and
- Practical experience

The court of law, before admitting any of the opinion made by an expert, needs to ensure that the person is an expert under the law. If it is found that the person is not an expert, his opinion is discarded by the court. For checking that the witness is an expert, he must be examined and cross-examined [3]. A person becomes an expert by:

- Practice,
- Observation, or
- Experience

Expert Witness : Role and responsibilities

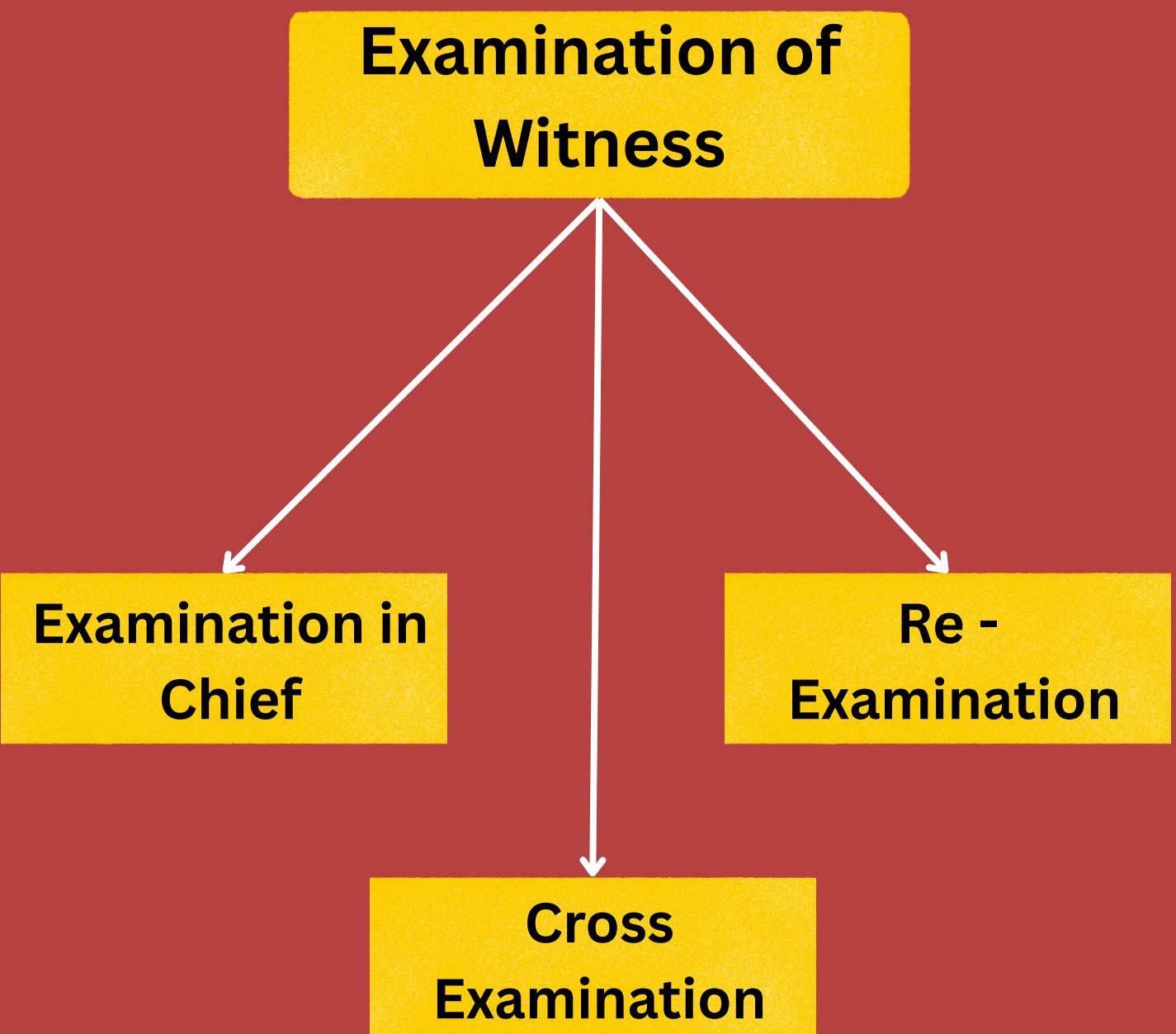
- Provide specialized knowledge
- Give opinions
- Review evidence
- Remain impartial

Section 137 of the Indian Evidence Act, 1872, defines **three stages of a witness's examination**: examination-in-chief, cross-examination, and re-examination.

Examination-in-chief is conducted by the party that calls the witness, cross-examination is conducted by the adverse party, and re-examination is conducted by the original party after cross-examination to clarify points from the cross-examination.

- **Examination-in-chief:** The party calling the witness examines them first.
- **Cross-examination:** The adverse party then has the opportunity to cross-examine the witness.
- **Re-examination:** After cross-examination, the original party has the option to re-examine the witness.

Examination of Witness



Examination of a witness is asking the witness questions regarding relevant facts in the case and recording the statements of witnesses as evidence. There are three parts to the examination of a witness and [Section 138](#) of the Evidence Act states that the witness must be examined in the following order:

- First, the party that called the witness examines him, this process is called **examination-in-chief** as mentioned under [Section 137](#) of the Indian Evidence Act.
- After the completion of the examination-in-chief, if the opposite party wants to, they can take over the witness and cross-question him about his previous answers. The opposite party may ask him any question regarding all the relevant facts and not merely the facts discussed during the examination-in-chief. This process has been described in Section [137](#) of the act as **cross-examination**.
- If the party that called the witness sees the need to examine the witness again after cross-examination, they may examine the witness one more time. This has been laid down as **re-examination** in Section [137](#) of the Indian Evidence Act, 1872.

Cross Examination



- Cross-examination is the **questioning** of a witness by the opposing party in a legal trial, following their initial testimony in a direct examination.
- The **primary goals** are to discredit the witness's testimony, challenge their credibility, and test their knowledge, often through the use of leading questions.
- This process is a fundamental part of common law legal systems and is a key strategy for strengthening one's own case.

Cross Examination

- **Purpose:** The main objectives are to test the witness's credibility, challenge the accuracy of their testimony, and potentially elicit information that supports the opposing side's case.
- **Procedure:** It is the second stage of witness questioning. It is preceded by the direct examination (where the party who called the witness questions them) and can be followed by a re-examination.
- **Method:** Lawyers use targeted questions, often leading questions, to guide the witness and elicit specific answers.
- **Impeachment:** A lawyer can use a witness's previous statements to contradict them. To do so, the witness's attention must first be drawn to the inconsistent parts of the writing or statement.
- **Strategic considerations:** Effective cross-examination requires preparation, discipline, and skill. Lawyers must decide when to approach a witness, formulate targeted questions, and choose between different strategies to best serve their case.

Re-examination

- Re-examination is the process, as defined by Section 137 of the Indian Evidence Act, **where a witness is questioned by the party who initially called them, after they have been cross-examined by the opposing party.**
- Its **purpose** is to clarify or explain any ambiguities or issues that arose during the cross-examination, not to introduce entirely new matters unless the court grants permission.

Examination in Chief,
Cross - Examination
and Re - Examination

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Section 142 - 143 of BSA



Culpable Homicide

- Culpable homicide is the act of causing death by doing an act with the intent to cause death, or with the knowledge that the act is likely to cause death.
- It is a broader term that includes murder, but also covers acts not amounting to murder under specific circumstances, such as grave and sudden provocation, or when the offender's knowledge or intent is less severe.

Key elements of Culpable Homicide

- **Causing death:** The act must result in the death of a human being.
- **Guilty mind (*mens rea*):** The act must be accompanied by a guilty mind, meaning either intention or knowledge. This is a core principle in criminal law, where an act is not a crime unless the mind is also guilty.
- **Intention:** The act is done with the intention of causing death or causing bodily injury likely to cause death.
- **Knowledge:** The act is done with the knowledge that it is likely to cause death.
- **Culpable homicide vs. murder:** Murder is a more severe form of culpable homicide, requiring a higher degree of intention or knowledge.

Non - Culpable Homicide

Non-culpable homicide refers to a killing that is not considered a crime because it is justified or excusable under the law, such as self-defense or accident.

It is a lawful homicide, distinct from culpable homicide, which involves criminal intent.

Non - Culpable Homicide

- **Justifiable homicide:** This includes acts like a lawful execution by the state or killings committed in self-defense, where the force used is deemed necessary and proportional.
- **Excusable homicide:** This category includes accidental deaths where there was no criminal intent, such as a hunting accident or a car crash caused by pure misadventure (without negligence).
- **Absence of criminal intent:** Non-culpable homicide is characterized by the absence of the criminal intent or negligence that is required for a culpable homicide charge.

- **Culpable homicide** = Intent or knowledge.
- **Non-culpable homicide** = No intent, no knowledge, accidental or legally justified.