



COURTS & ITS PROCESSING

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PROCEDURE FOR EXAMINATION OF WITNESS IN THE COURT

- Summons
- Oath taking
- Recording of evidence
 1. Examination in chief
 2. Cross examination
 3. Re-examination
 4. Court questions


Summon/Subpoena [summon=to call sub=under, poena=penalty]

It is defined as a written document in duplicate signed by the presiding officer of the court compelling the attendance of a witness in the court under penalty on a specific date, time & for specific case.

Penalty- When the summon is issued the witness is expected to attend the court unless there is reasonable excuse.

Not obeying the summons entails penalty. (u/s 174 IPC). In criminal case witness may be awarded –

- Fine upto 500/-
- Imprisonment upto 6 months
- A warrant may be issued to ensure his presence in the court.



Preferences- In case 2 or more summons are received for the same date & time, ~~the principles for the preference are,~~

- Criminal case is preferred over civil case
- If both cases are criminal or civil, summon from higher court is preferred.
- If both cases are criminal or civil, from the court of same status, the summon received earlier is preferred.

The other court is informed accordingly.

Conduct money (*Bhatta*)-

refers to the travelling & daily expenses to reach the court.

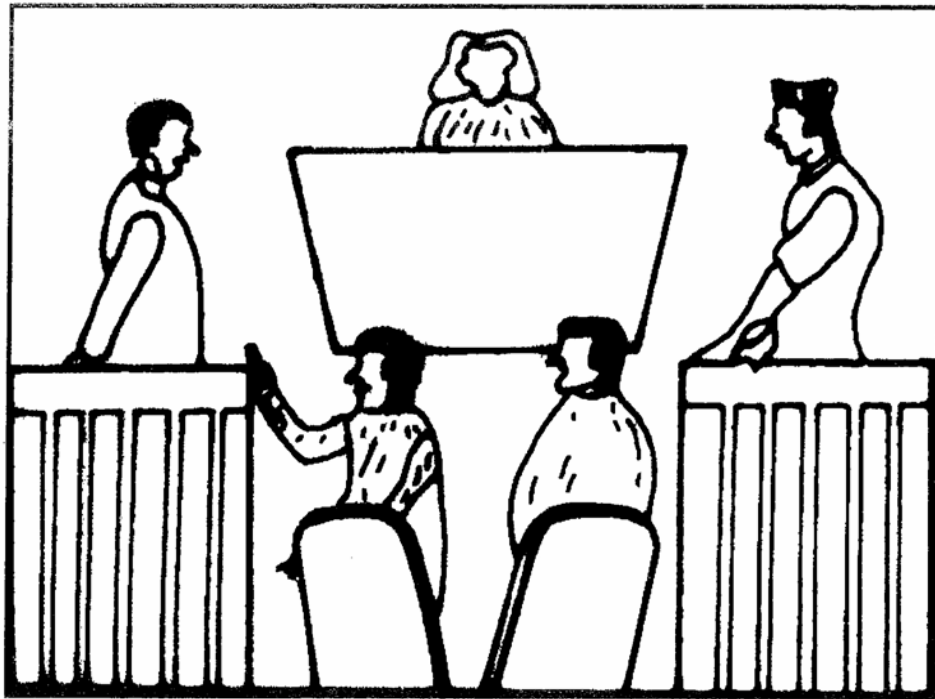
Oath taking

Every witness before giving the evidence ii require to take oath in the name of one of the religious books i.e. Gita, Bibal, Quran depending upon his religion.stating, "I willspeak the truth, the whole truth & nothing but the truth"

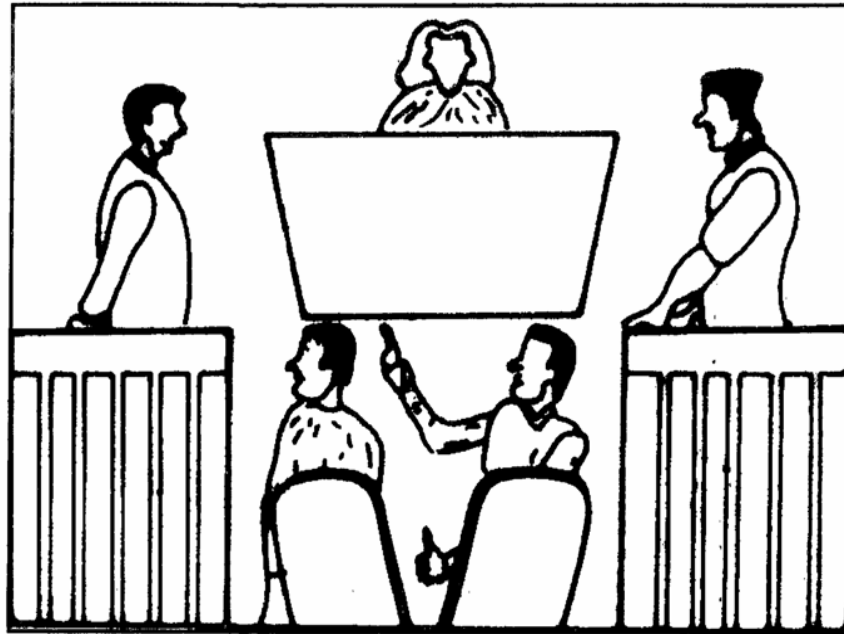
Giving the false evidence is charged with the crime of **Perjury u/s 193** of IPC. [imprisonment upto 7 years]

Recording of evidence in court

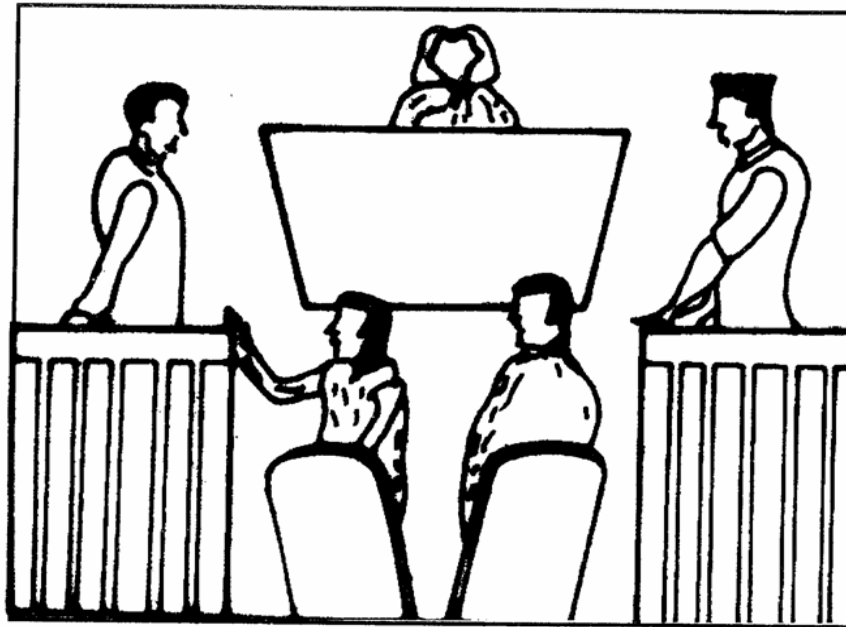
- Examination in chief-



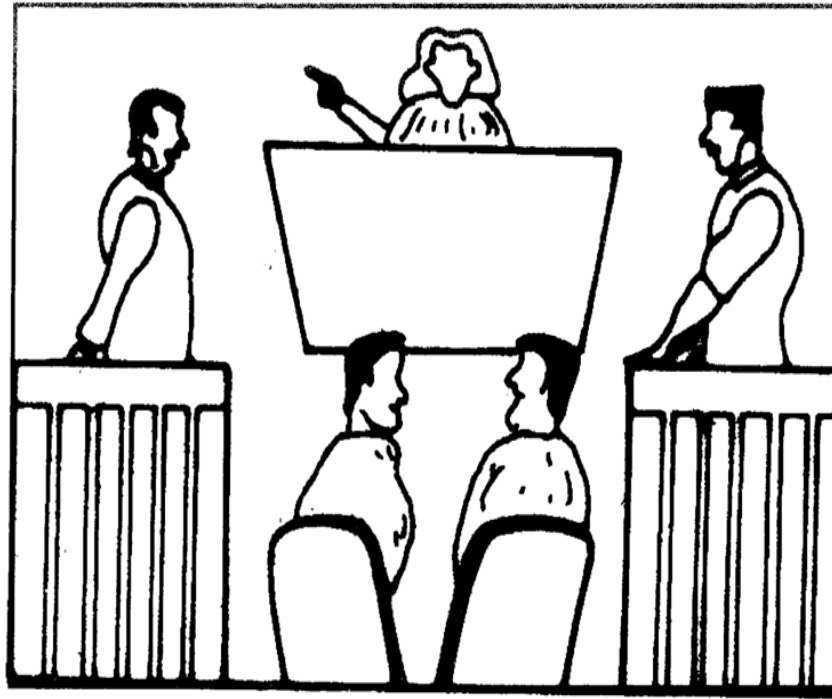
- Cross examination-



- Re examination-



○ Court question-



WITNESS

Is defined as a person who gives evidence on oath, in the court.

Types –

1. Simple / Ordinary
2. Expert / skilled
3. Hostile / Adverse / Unfavorable.

Simple W.- It refers to the one who narrates in the court what he has himself seen, heard or perceived. i.e. of what he has the direct knowledge. e.g. eye witness of murder.

- **Expert W.-** It refers to the witness who is skilled in some particular field. E.g. medical officer, chemical analyzer, finger print expert. Expert W.can,
 - 1.Make an opinion.
 - 2.be asked hypothetical Question.
in relation to his specialty.
 - 3.volunteer the statement.

Hostile W.- It refers to the witness who is hostile/bad/unfavorable for his own party.

Normally every witness is expected to state the truth, but if he is influenced or if he has some motive, he may tell a lie in the court.

Such witness may be declared hostile by the court as per sec.191 of IPC.

Any of the above 2 witnesses can be hostile.

A medical man can be simple, expert as well as hostile witness.

MEDICAL EVIDENCE

Evidence refers to the written document & oral statement on oath, which help the court to decide the case & when the evidence refers to medical field it is k/a medical evidence.

Types –

- 1] Written/Documentary– Medical certificates,
 - Medico legal reports,
 - Dying declaration,
 - Dying deposition
- 2] Oral – Direct
 - Indirect
- 3] Circumstantial

MEDICAL CERTIFICATES

It refers to the certificates which are issued by the medical officer at the request of patient or his relatives in one of the following situation.

- Sickness
- Fitness
- Vaccination
- Birth
- Death

Precautions-

It can be issued only by R.M.P. & should carry his signature, name, designation & registration no.

- Name, age, sex, address & 2 marks of identification should be noted.
- Certificate should always be based upon observation & never on the history alone as they can be used as evidence.

Issuing false certificates is punishable u/s 197 of IPC.

- A copy of certificate issued should be retained by the M.O.

MEDICO LEGAL REPORTS

It refers to the reports prepared by the RMP, at the request of the I.O. or court. E.g. are,

- Post mortem report
- Injury report
- Insanity report
- Alcohol report
- Examination of victim or accused of rape.
- Impotency report .

Precautions-

Can be prepared by RMP only.

Report should be based on observation & not on assumption.

- It should be prepared during examination or immediately after examination & should carry the signature, name, designation of the M.O.
- Any M.L. Report has 3 parts.
 1. Preliminary data
 2. Observation
 3. Opinion/Inference
- Any item like weapon, cloths, bones sent for examination is examined described in report, then sealed & handed over to the I.O. under receipt.

DYING DECLARATION

It is defined as the written or verbal statement made by the person who is going to die because of some un-natural act done on his body, narrating the circumstances responsible for his likely un-natural death.

As per I.E.A. [Indian Evidence Act] every person during last stages of his life speak total truth, hence great sanctity is attached to this statement. It is regarded as an important evidence in that case.

Precautions-

Ideally it should be recorded by executive magistrate. [But if magistrate is not available, it can be recorded by doctor himself or if the patient is not in the hospital it can also be recorded by any person present near the patient.]

- Doctor has to certify pt. to be 'compos mentis'
- During recording police, relatives should not be present there.
- It should be recorded in the presence of magistrate, doctor & 2 disinterested witness.
- No oath is administered & leading questions are not permitted.
- It is recorded in Question & answer form in the vernacular of patient.

At the end it is read over to the patient & is signed by the magistrate, doctor & 2 disinterested witness.

○ If the patient dies during recording Dr. should certify that pt. is dead & incomplete declaration is signed by all the concerned.

○ The date, time & place of recording is noted & report is sent to magistrate (if not present) in a sealed cover.

○ If the pt. survives after recording, the declaration loses its value, because now he can be called to the court for evidence where cross examination will be possible.

DYING DEPOSITION

It is defined as the deposition (statement on oath) made by a person likely to die bcoz of some unnatural act done on his body, narrating the cause of his likely unnatural death to the *magistrate, in the +nse of accused & lawyers of both parties who can cross examine the pt.*

Precautions-

- It should be by magistrate, in the +nse of accused & lawyers of both parties.
- Dr. has to be +nt through out the procedure & has to certify the pt. in compos mentis.
- Oath is administered to the pt.
- Cross examination includes leading questions
- Any person may be present during recording
- No witness required.

Recording is done as per the procedure of court & hence almost it seems that a court is +nt at bedside of pt.

Importance- Dying deposition is having more value than that of dying declaration bcoz,

- It is recorded by magistrate.
- In the +nse of accused & lawyers of both parties.
- It is recorded after cross examination.

It retains its value even if pt. survives bcoz cross examination has already been done.

DYING DECLARATION

Ideally recorded by magistrate, but not compulsory.

- No oath necessary.
- +nse of accused & his lawyers is not necessary
- Inferior to dying deposition.

DYING DEPOSITION

- Always recorded by magistrate.
- Oath taking is must.
- +nse of accused & his lawyers is necessary.
- Superior to dying deposition.

ORAL EVIDENCE

It refers to the evidence given orally under oath in the court of law. It is of 2 types,

1. Direct- i.e. witness giving the evidence of which he has the direct knowledge (he himself has seen, heard or perceived the event)
2. Indirect (Heresay)- evidence of which the witness has indirect knowledge (he has known the details from others).

As the witness cannot withstand the cross examination, indirect evidence is not generally permitted in the court.

Oral evidence is superior to written bcoz in this case cross examination is possible.

CIRCUMSTANTIAL EVIDENCE

It refers to the evidences collected from the scene of crime. e.g.

- S/o struggle
- Stains of blood, semen, saliva on cloths & body.
- Weapon/Poison at the site or in the grip of deceased.
- Suicidal note.
- Bullet found during P.M.examination.