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THE ROLE OF A WITNESS IN THE JUDICIAL PROCEEDING: AN OVERVIEW UNDER CONVENTIONAL AND ISLAMIC LAW

SAZZADUL ISLAM RIPON*

***Senior Lecturer, Department of Law, Bangladesh Islami University, Dhaka.

Abstract:

Proper administration of justice ensures the rule of law in the society through the court process involved the vital role of the witness to testify. Therefore, it is necessary to make sure the fairness of the witness free from all sorts of fear and feeling of telling the truth of the case and free from all kinds of biasness as the fruitful conclusion of the case sometimes entirely depends on the witness's statement. In the article, it is strived for showing and explaining the position of witness in the judicial process, their categories and above all the process they are testified through different processes, stages and examinations with the limitations thereof and the court's powers and duties to that respect under the conventional and islamic law. It also aims and intends to enumerate the significance of the statement given by the witness which pave the way for ends of justice.

Key Words:

Judicial Proceeding, Conventional Law, Islamic Law.

1. Introduction

Witness is an important constituent of the administration of justice. Anyone with information about a crime or fact might have to come to court to answer questions about what they saw, heard or experience. To testify in a court case, a person must be able to explain what he knows, understand the lawyers' questions and answer them. By giving evidence linking to the charge of the offence the witness performs a sacred and public duty of assisting the court to discover the truth. This is the reason why before giving evidence he/she either takes an oath in the name of God or makes a solemn affirmation that he/she will speak the truth, the whole truth and nothing but the truth. He sacrifices his time and takes the trouble to travel all the way to the court to give evidence. The witness should, therefore, be treated with great respect and consideration as a guest of honour.

2. Definition of a Witness

In the Oxford Dictionary 'witness' is defined as a person who sees an event, typically a crime or accident, take place or a person giving sworn testimony to a court of law or the police or a person who is present at the signing of a document and signs it themselves to confirm this. No particular definition of witness is set out in the Evidence Act, 1872. However, a witness is one who can give a firsthand account of something seen, heard, or experienced: In Islam, a martyr is termed ***shaheed***, شهيد. *Shaheed* appears in the Quran in a variety of contexts, including witnessing to righteousness, witnessing a financial transaction and being killed, even in an accident as long as it doesn't happen with the intention to commit a sin, when they are believed to remain alive making them witnesses over worldly events without taking part in them anymore.[1] Witnesses, in a *sharia* court system, must be faithful, that is Muslim. Male Muslim witnesses are deemed more reliable than female Muslim witnesses, and non-Muslim witnesses considered unreliable and receive no priority in a *sharia* court.

3. What Judicial Proceeding is

Nowhere in the Evidence Act, 1872 'judicial proceedings' are defined. But the term includes any proceeding in the course of which evidence is or may be legally taken on oath.[2] Legal definition of Judicial Proceeding can be stated as procedurals and hearings before a court, or a tribunal or administrative board that performs a judicial function. Judicial proceedings also

[1] Quran 3:140.
[2] Section 4(m) of *the Code of Criminal Procedure, 1898* ;(Act no. V of 1898)

refer to any proceedings that take place in a court of law in which a judge presides. The judge, essentially, enforces the rules of the courtroom. The proceedings can be either criminal or civil. The judge need not even be the one making the final decision on the case in order for proceedings to be considered judicial proceedings. In *Sharia* judicial proceedings have significant differences from other legal traditions, including those in both common law and civil law. *Sharia* courts traditionally do not rely on lawyers; plaintiffs and defendants represent themselves. Trials are conducted solely by the judge, and there is no jury system. There is no pre-trial discovery process, and no cross-examination of witnesses. Unlike common law, judges' verdicts do not set binding precedents under the principle of *stare decisis*, and unlike civil law, *sharia* is left to the interpretation in each case and has no formally codified universal statutes. The rules of evidence in *sharia* courts also maintain a distinctive custom of prioritizing oral testimony.

4. Significance of Testimony of Witnesses

Islam insists on giving *Al-Bayyinah* to the court and makes it obligatory when given as witness to Allah so as to secure the life, property and interest of man.

"The witness should not refuse when they are called on (for evidence)."[3]

That's why if in consequence of court's order a witness refuses to testify then it would amount to an act of contempt of court and disobedience to the lawful authority.

"Conceal not evidence, for whoever conceals it his heart is tainted with sin and Allah knoweth all that ye do."[4]

According to Abi Dam, when the testimony of a person is required by a judge (or court) thereafter such testimony or evidence and the adducing thereof become an *amanah* (trust) and also *fard ain.*[5]

However, in our conventional legal system section 132 of the Evidence Act emphasis on giving evidence by saying that a court may compel a witness to answer any relevant question even if the answer is incriminating to a penalty but at the same time it guarantees that no legal action can be taken against the witness for the statements, if true. So anyone thought as witness to a legal proceeding is under obligation to make it to the court for the sake of ensuring justice and the court can compel such witness in giving evidence.

[3] Quran, 2:282
[4] Quran, 2:283
[5] Ibn Abi Dam, Al-Qadi Shahabuddin Abi Ishak Ibrahim 'Abdullah Al-Hamdani Al-Humawi, *Kitab Adab Al-Qada*, Matba'ah Al-Irshaad, (Bagdad: 1984), 1st edition, vol.1, p. 125

5. Ordinary Witness

An ordinary witness is someone who personally saw or heard something about the crime who must answer the lawyers' questions and tell the judge what they saw or heard. All these evidences are treated as oral evidence and it must be direct.[6] Oral evidence as to the existence of any material thing, supplemented by an order to produce that thing in court for inspection.[7] The aforesaid views upheld in the islamic legal system as a witness shall only testify to what he had heard or seen. Allah says,

"O Ye who believe! Stand out firmly for justice, as witness to Allah, even as against yourselves, or your parents, or your kin, and whether it be (against) rich or poor. For Allah can best protect both. Follow not the lusts (of your hearts), lest ye swerve, and if ye distort (justice) or decline to do justice, verily Allah is well acquainted with all that ye do."[8]

This ayah explains witnesses summoned to court shall appear as witnesses for Allah and not for the litigants or without regard to the fact that it could be injurious to the witness. Only the truth is encouraged to embody in the court for fair trial of the case.

6. Expert Witness

Evidence is received in court only of facts,[9] from various sources where expert opinion is also accepted so as to ensure justice. An expert is a person who has special knowledge and skill in the particular fact calling to which the inquiry relates.[10] The evidence of an expert is admissible only when the court has to form an opinion upon a point of foreign law, science or art or as to identity of handwriting or identity of finger impression.[11] The expert opinion should be taken cautiously as often they are called by a party with prior consultation that requires very often the cross-examining of the expert. Opinions as to existence of right or custom,[12] as to usages, tenets,[13] and on relationship[14] are sometimes relevant to the court for a

[6] Section 60 of *the Evidence Act 1872* ;(Act no. 1 of 1872)
[7] *Phani Bhusan Halder* vs. *State* 27 DLR 254
[8] Quran, 4:135
[9] Rahman, Dr. Rafiqur , *Law of Evidence*, (Dhaka :1993, Nuruzzaman Choudhury), p. 86
[10] Gupta. K.K Singh, *The Indian Evidence Act, 1872* (Lucknow :1967, 2nd Edition, Eastern Book Company), p. 117
[11] Ibid. p. 116 & section 45 of *the Evidence Act 1872* ;(Act no. 1 of 1872)
[12] Section 48 of *the Evidence Act 1872* ;(Act no. 1 of 1872)
[13] Section 49, Ibid.
[14] Section 50, Ibid.

judgment. However, under Islamic Law it is termed as *Al Rayu Al Khabir* and also recognized as accepted evidence.

"And before thee also the messengers We sent were but men, to whom We granted inspiration: if ye realize this not, ask those who possess the message (wisdom)."[15]

This *ayah* of the Holy Quran emphasizes on the importance of giving expert opinion. The judge who is faced with a perplexing issue should, therefore, inquire from a person who is skilled in such an issue. This was also the practice of the Companions of the Prophet (Sm.). *Ulamas* are agreed that opinion of the expert binds the court.

7. Child Witness

A child who is prevented from understanding the question put to him or from giving rational answers to those questions by reason of tender years is not a competent witness. No particular year of age is required to be a witness. Before a child of tender years is asked any question bearing on the *res–gestae,* the court should test his capacity to understand and to give rational answers and his capacity to understand the difference between truth and falsehood[16] and reliability of such child's evidence depends on facts of the case.[17] Where the guilt or innocence of a person depends upon the evidence of a small boy, the testimony should be recorded in the form of questions and answers.[18] The only thing that requires to be done is to scrutinize his evidence with care and caution to see whether it suffers from any in consistency. To base conviction upon his evidence it is prudent to seek corroboration.[19] However, in islamic parlance, *baligh* (age of majority should be a condition before someone's testimony can be accepted. [20] The *Hanbalis* also accepts the testimony of a child in injury cases on the condition that the child's testimony must be given before he or she leaves the scene of the incident because such circumstances will show that the child is speaking the truth and still remembers the event well. A report quoting Ahmad Bin Hanbal relates that the testimony of a child will be allowed if the child is above ten years old. Ibn Hamid upholds this opinion of Ahmad bin Hanbal except *hudud a*nd *qisas* cases.[21]

[15] Quran,16:43
[16] *Rangu Mia* 7 DLR 564
[17] *Muhammad Afzal* PLD 1957 (WP) Lahore 788
[18] *Emperor* vs *Haria Dhobi*, AIR 1937 Pat. 662; 172 IC 780
[19] *Gadu Mia* vs *The State* 44 DLR 246
[20] Abdul Qadir Audah, *Al Tashri Al-Jina* 'i Al-Islami, Matba'ah Al-Madani, (Egypt: 1963), vol 2, p 403.
[21] Ahmad Fathi Bahansi, *Nazariyyah Al-Ithbaat*, Sharikah Al-Arabiyyah Li Al-Tibaah, (Egypt: 1962), pp. 21-22

8. Female Witness

In the conventional legal system female are given the equal and similar importance to that of the male in testifying their statement in the court within the purview of section 118 of the Evidence Act. Female are competent witness in all cases be it civil or criminal and credibility of the testimony has the similar importance of the male. The only test laid down by the Act of the competency of a witness whether male or female is his or her capacity to understand and rationally answer the question put to him.[22]In islamic parlance, the testimony of two female witnesses is considered of a single male witness as to their level of understanding and this tendency of taking testimony made applicable to the cases involving property such as sale and purchase, *waqaf,* tenancies, gifts, *musaqah*, *mudaraba*, company law, bequests or property related crimes such as unintentional killing or compensation for injuries inflicted.[23] In many of the cases in islam male and female have been made witness differently and also number of witness required to prove the case is also different. Quranic verses as,

"And get two witnesses, out of your own men, and if there are not two men, then a man and two women, such as ye choose, for witnesses, so that if one of them errs, the other can remind her."[24]

9. Dump Witness

A dumb person need not be prevented from being a credible and reliable witness merely due to his/her physical disability. Such a person though unable to speak may convey himself through writing if literate or through signs and gestures if he is unable to read and write. When a dumb person is examined in the court, the court has to exercise due caution and take care to ascertain before he is examined that he possesses the requisite amount of intelligence and that he understands the nature of an oath. Evidence so given shall be deemed to be oral evidence.[25] But in case of a witness who is both deaf and dump, there is no scope of giving any evidence as such witness cannot hear any question.[26] However, in islamic perspective the *ulama* are divided in their views as regards the testimony of a dump witness where Imam Malik and Al-shafi are in favor of the acceptance of the testimony of dump person so long as

[22] *Abdullah Shah* vs. *The State* PLD 1968 Pesh 1
[23] A. Othman. Mahmud Saedon, *An Introduction to Islamic Law of Evidence*, (Kuala Lumpur: 2003,The Open Press), p. 64
[24] Quran, 2:282
[25] Section119 of *the Evidence Act, 1872* ; (Act no. 1 of 1872)
[26] *Moshed (Md) @ Morshed @ Md Morshed Alam* vs. *State* 53 DLR 123

the gestures of these persons are understandable with regards to matters like *talak*, *nikah*, *zihar* and *ila* but Imam Hanbal reject the testimony of such witness supporting the views that the gestures made do not reach the status of *yaqin* or certainty. Consequently, the signs of dump person can be accepted in time of emergency. The tendency of contemporary *ulama* is to accept the testimony of the dump on the basis of necessity because there are no other witness's present.[27]

10. Blind Witness

A blind is a person of having no sight yet he may be a competent witness. He can depose on matters heard or perceived by him. The category shown for the qualified witness as to understand the question put to the witness allows the acceptance of blind's testimony. A blind can hear the other statement or can perceive the incidents by his senses. In islam, however, the testimony of the blind is rejected by Imam Abu Hanifah whereas Imam Malik, Shafi and Hanbali accept the evidence of the blind except in *hudud* cases. Al Shirazi have held that the acceptance of a testimony of a blind person is dependent on things that he could hear only and not things which are dependent on eyesight, e.g. witnessing a murder, robbery, *zina* etc. In cases such as these, the testimony of a blind person is inadmissible.[28]

11. Hostile Witness

Generally a witness is presumed to testify in favour of the person for whose instance he is in the court. But notion sometimes to be proved as otherwise when the court permits the person calling the witness to cross-examine. In such a situation the witness sought to be declared as hostile, firstly, to the honorable court. Evidence of hostile witness can be rejected. There is no rule of law that the evidence of witness who has been treated as hostile must be rejected, either in whole or in part, or that it must be rejected so far as it favours the party calling the witness or so far as it favours the opposite party.[29] It should be remembered that a witness who is unfavorable is not necessarily hostile, for a hostile witness has been defined as one who from the manner in which he gives his evidence shows that he is not desirous of telling the truth to the court. In this circumstances, the court may in its discretion permit the person who calls a witness to put any questions to him which might be put in cross-examination by

[27] Abdul Karim Zaidan, Nizam *Al-Qada Fi Al-Shariah* Al-Islamiyyah, Matba'ah Al-Ani, (Bagdad: 1984), p.185
[28] Ibid. p. 185
[29] *Suruj Mia* 2 DLR 114

the adverse party.[30] When a witness is cross examined by party calling him the whole evidence is to be taken into consideration.[31]

12. Accused as a Witness

Formerly an accused was not competent to be a witness or testify on his own behalf and so could not be given oath. But after insertion of section 340[32] of the Code of Criminal Procedure, 1898, an accused shall be competent witness for the defence and may give evidence on oath in disproof of the charge made against him or any person charged together with him at the same trial. He cannot be called as a witness except on his request in writing and except for the defence. In other words, he has the option to examine himself as a witness for the defence and in such case he has to take oath and he is also liable to be cross-examined. An accused is not a competent witness for the prosecution and not compellable to give any evidence for anyone else. He may choose to remain silent entirely or to content himself with an unsworn statement, on which he cannot be cross-examined. The rationale of law is apparently to give accused a wholly free choice in the matter.

13. Retraction of Testimony

At times it may happen so that an accused makes confession and afterwards at the trial retracts that. A mere subsequent retraction of a confession, when it was duly recorded and certified by a competent Magistrate is not enough to make it inadmissible in all cases. But it may create a doubt in the mind of court about its voluntary character and trustworthiness. That is why now it is settled rule of prudence that before convicting an accused on the basis of confession, which has been retreated afterwards, the court must see that it has been corroborated by some other independent evidence, though, no doubt, that a conviction without corroboration is not strictly illegal.[33] With regard to this question of retraction Islamic law prescribes several rulings that the judgment shall be postponed if it is made before judgment and if after retraction has been held after judgment is pronounced, a number of things will have to be considered; a) in cases of *hudud* or *qisas*, the execution of judgment should be stayed, b) no rule of stay where there are claims for losses or claims other than *hudud* or

[30] Section 154 of *the Evidence Act, 1872* ;(Act no. 1 of 1872)
[31] *Fazlul Haq Sikder* vs *State* 1 BLC 173
[32] Subs. By Act XVIII of 1923, s. 89, for the original section 340 of *the Code of Criminal Procedure Code, 1898* (Act no v of 1898)
[33] *Abdul Ghani* vs. *U.P.,* AIR, 1973 S.C. 264

qisas. If a witness retracts testimony after execution of judgment, the judgment still stands. But the witness shall be subject to *qisas* if he purposely gave false evidence.[34]

14. Accomplice and Approver as Witness

An accomplice is a person associated with the accused at the time of commission of crime or he may be termed as a person who participates in the crime.[35] An accomplice shall be a competent witness against an accused person; and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice[36] although an accomplice cannot corroborate himself.[37] Though the conviction of an accomplice cannot be said to be illegal yet the courts will, as a matter of practice, not accept evidence of such a witness without corroboration in material particulars.[38] The evidence of an accomplice does not demand outright rejection if there is no corroboration but, though, there is no legal necessity to seek corroboration of an accomplice evidence it is desirable that the court seeks reassuring circumstances to satisfy judicial conscience that evidence is true.[39]

15. Husband and Wife as a Witness

In all civil proceedings the parties to the suit, and the husband or wife of any party to the suit, shall be competent witnesses. Further, in criminal proceedings against any person, the husband or wife of such person, respectively, shall be a competent witness.[40] Thus it is pretty clear that the spouse of a person can be a competent witness against that person. Husband and wife are both competent witness against each other in civil and criminal cases. They are competent witness to prove that there has been no conjugation between them during marriage.[41] Although not mentioned in the Act, it has been held in several cases that provisions of this section are subject to Section 122, which makes the communication between a husband and wife privileged. The husband or wife of the accused is not allowed to testify against the accused, even if he or she volunteers to. The purpose of this rule is to

[34] A. Othman. Mahmud Saedon, *An Introduction to Islamic Law of Evidence,* (Kuala Lumpur: 2003,The Open Press), pp. 69-70
[35] *Zafar Ali* vs. *State* 14DLR (SC) 174; 1962 PLD (SC) 320.
[36] Section 133 of *the Evidence Act, 1872 ;*(Act no. 1 of 1872)
[37] 2 DLR (PC) 39
[38] *State* vs. *Ershad Ali Sikder and others* 56 DLR 185
[39] Ibid. p. 275
[40] Section 120, of *the Evidence Act, 1872 ;(*Act no. 1 of 1872)
[41] *Shyam Singh* vs. *Shaiwalini Ghosh*, AIR 1947, Calcutta HC

protect the confidentiality of conversations between married couples and to keep peace in the home.

16. Witness's Character

Character of a witness is always relevant and admissible because it affects his credit and is always material as it helps court to come to the conclusion whether his evidence should be treated as trustworthy or not. In this respect character includes both reputation and disposition. This is why section 146 of the Evidence Act allows any question in cross-examination, injuring the character of the witness even though the answer to such question might tend to criminate him but with a view to test his veracity, to test his position in life subject only to the limitations contained in section 148 of the Evidence Act. However, in civil cases character of a party to the suit is irrelevant and inadmissible[42]unless it affects the amount of damages.[43] On the other hand, in criminal proceedings the fact that the accused person is of a good character is relevant.[44] Similarly the accused's bad character is relevant unless evidence has been given that he has a good character, in which case it becomes relevant.[45] Where the bad character of the accused is itself a fact in issue, in such situation the accused may adduce the evidence as to the bad character of the victim or prosecutrix.[46]

17. Special Features of Witness under Islamic Law

The person making the testimony in the court must be of a sound minded muslim. Quranic verses as,

"O ye who believe! When death approaches any of you, (take) witnesses among yourselves when making bequests- two just men of your own (brotherhood) or others from outside if ye are journeying through the earth, and the chance of death befalls you."[47]

Again *ulama* are unanimous in their opinion that *baligh* (age of majority) should be a condition before someone's testimony can be accepted. Most important feature under this law is to be mentioned as the witness must be *adil* (just) with strong memory (*Al-Dabt).* Allah says,

[42] Section52 of *the Evidence Act, 1872;* (Act no 1of 1872)
[43] Section 55,Ibid.
[44] Section 53, Ibid.
[45] Section 54,Ibid.
[46] Section155, Ibid.
[47] Quran: 5:106

"Thus when they fulfill their term appointed, either take them back on equitable terms or part with them on equitable terms; and take for witness two persons from among you endued with justice, and establish the evidence (as) before Allah."[48]

He should be of a person free from slavery. It has been ordained in the Quran;

"Allah sets forth the parable (of two men: one) a slave under the dominion of another; he has no power of any sort."[49]

The particular last one event to be noted here a witness should be someone who is trustworthy and of good character with good morals.

18. Witness's Oath

A major component of taking evidence is the way of taking testimony through a procedure following a formal oath before tender of the statement in the court which is frequently used in the court as *halafnama*. Oaths or affirmations are administered all Courts and persons having by law or consent of parties authority to receive evidence.[50] All oaths and affirmations shall be administered according to such forms as the Supreme Court may from time to time prescribe. And until any such forms are prescribed by the Supreme Court such oaths and affirmations shall be administered according to the forms now in use.[51] At present, witness's in Dock customarily taking oath as saying " hvnv ewje mZ¨ ewje, †Kv‡bv mZ¨ †Mvcb Kwie bv Ges mZ¨ ewjqv wg_¨v ewje bvÓ (*Whatever I testify is true, no true shall be hidden and no false shall be told as true*). If the party or witness refuses to make the oath or solemn affirmation, he shall not be compelled to make it, but the Court shall record, as part of the proceedings, the nature of the oath or affirmation proposed, the facts that he was asked whether he would make it, and that he refused it, together with any reason which he may assign for his refusal.[52]

In the same way such oath termed as *Al – Yamin* under Islamic law. In the Quranic verses,

Fulfill the covenant of Allah when you have entered into it, and break not your oaths after you have confirmed them; indeed you have made Allah your surety; for Allah knoweth all that you do".[53]

Besides in a *Hadith*, the trace of oath is clearly identified,

[48] Quran: 65:2
[49] Quran: 16:75
[50] Section 4 of *the Oaths Act, 1873;* (Act no X of 1873)
[51] Section 7, Ibid.
[52] Section 12 of *the Oaths Act, 1873;* (Act no X of 1873)
[53] Quran, 16:91

"The Evidence (al bayyinah) is on the accuser and the oath is on the accused".[54]

The fact of oath under this law is that it is taken in the name of only Allah and another characteristic of such oath it is generally done after 'Asr prayer' in the mosque where congregational prayers are performed and for the non-muslim according to them in their sacred place. The plaintiff, defendant and the witness of the case are obliged for taking oath refusal of which indicates the arguments in his favor is considered as weak.

19. Witness's Number

In our conventional legal system number of witness to testify left to the discretion of the judges which is to be applied in each particular fact and particular case. No particular number of witnesses shall in any case be required for the proof of any fact.[55]If believed, conviction can be based on the solitary evidence.[56] But Islam prescribes the number of witnesses in particular cases. Four male witnesses are required for the proof of *zina* case,[57] three male witness are to be shown to proof oneself as destitute (*Faqir),*[58] two male witnesses to prove *hudud* offences except *zina* and *qisas.* Such as theft, robbery, dacoity, consumption of intoxicants, apostacy, rebellion etc. Again in proving *Nikah, talaq,* bequests, freeing of slaves, *ila, zihar, nasab* two male witnesses are required.[59]There are some offences which are to be proved by two male witnesses or one male witness together with two female witnesses involving the cases of property such as sale and purchase, *waqf,* tenancies, gifts, *musaqah, mudaraba,* etc.[60] Sometimes testimony of a male witness and oath of the plaintiff is adduced in proving cases involving property only which was used during the four caliphs[61] and testimony of one male witness is used in the matter judges know the fact of the claim i.e. where the matter is judicially noticeable.[62] Testimony of one female witness is also accepted

[54] Al-Shaukani, Muhammad Bin 'Ali Bin Muhammad, *Nail Al-Autar*, Mustaffa Al-Babi Al-Halabi, (Egypt:1961), vol. 8, p. 316
[55] Section 134 of *the Evidence Act, 1872;* (Act no 1 of 1872)
[56] *Yusuf Sk* vs. *Appellate Tribunal*, 29 DLR (SC) 211.
[57] Quran, 4:15
[58] A. Othman. Mahmud Saedon, *An Introduction to Islamic Law of Evidence,* (Kuala Lumpur: 2003,The Open Press), p. 63
[59] A. Othman. Mahmud Saedon, *An Introduction to Islamic Law of Evidence,* (Kuala Lumpur: 2003,The Open Press), p. 63
[60] Ibid p. 64
[61] Ibid. p. 64
[62] Ibid. p. 65

off and on where the cases pertaining to women's affairs, such as birth of a baby, the crying of a baby, suckling, genital defects, determining virginity and the *iddah* period.[63]

20. Examination of Witness

Witnesses are examined in the open court under the personal direction and supervision of the judges. The view of his examination is to find out the truth of the case so that it is possible to come to a solution of the controversy between parties. A witness may face examination by the party who calls him, by the adverse party as well as by the presiding judge. A witness may be availed of the opportunity for refreshing his memory during he is testified as to referring previous written document. Witness shall be first examined-in-chief by the party calling him, then cross examined if the adverse party desires and then re-examined if the party calling him so desires.[64]All these examinations must relate to relevant facts but the cross –examination need not be confined to the fact which is given during examination in chief.

21. Shaking Credit of the Witness

The credit of the witness in their testimony bears the importance of acceptability of the evidence provided which the pave the way for trace out the truth of the case. The opposite party in a proceeding always tries to impeach the credit of a witness through many ways with the consent of the court; like, by the evidence of persons who testify that they believe him to be unworthy of credit from their knowledge of the witness or by proof that the witness has been bribed or has accepted the offer of a bribe or has received any other corrupt inducement to give his evidence.[65]Again the credit or trustworthiness can be impeached by the proof of former statements inconsistent with any part of his evidence which is liable to be contradicted or in the case a man is prosecuted for rape or attempt to ravish by showing that the prosecutrix is of generally immoral character.[66] In such a case corroboration of statement of prosecutrix by independent evidence is always necessary.[67]

[63] Ibid. pp. 65-66.
[64] Section 138 *of the Evidence Act, 1872 ;* (Act no 1of 1872)
[65] Section 158 *of the Evidence Act, 1872 ;* (Act no 1of 1872)
[66] Section158, Ibid.
[67] *Mumtaz Ahmed khan* vs *State*, PLD 1967 SC 326

22. Judge's Power of Questioning to the Witness

A Judge enjoy unfettered right of putting questions to the witness in attendance in the court. To discover or to proper proof of relevant facts he may ask any question he pleases, in any form, at any time, of any witness or of the parties about any fact relevant or irrelevant.[68] This power, however, should be used with great circumspection[69] and the witness is not bound to answer court questions which are meaningless.[70] It is the duty of the judge to put question to clear doubts arising out of the statements of witness.[71] The court also may order the production of any document or thing and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor, without leave of the court, to cross examine any witness upon any answer given in reply to any such question.[72] This power of judges are the same under islamic law of evidence to gather knowledge of the case to decide finally which can be obtained during the course of trial. For the judges Allah says,

"If thou judge, judge in equity between them; for Allah loveth those who judge in equity."[73]

23. Conclusion

Needless to say, the witness is one of the most important sources of information in discovering the truth about the case. He is entitled to be treated with courtesy when he arrives for giving evidence fearlessly. Comfort, convenience and dignity of the witness should be the concern of the judge with a view to finding out the truth through the testimony. It is high time the judges are to be sensitized about the responsibility to regulate cross examination so as to ensure that the witness is not ill treated affecting his dignity and honour. Therefore, the Supreme Court should take measure through training and supervision to sensitize the judges of their responsibility to protect the rights of the witnesses, protecting their security to make feel free to come to the court and giving their oral accounts easily, freely, securely and without hesitation of fear from any corner to ensure the vital role on the part of witness which is indispensible for the proceedings of court if needed some special provisions of Islamic evidence law aforementioned may be introduced to that effect.

[68] Section 165 of *the Evidence Act, 1872;* (Act no 1of 1872)
[69] *Balashri Das Sutrdhar* 13 DLR 289 (1962)
[70] *Bashir Ahmed* vs *State*, PLD 1957 Lah, 841
[71] *Hakim Khan* vs. *State*, PLD 1958 Pesh. 33
[72] Section 165 of *the Evidence Act, 1872*; (Act no 1of 1872)
[73] Quran. 5:42

24. References:

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