



Dissertation

On

The Impact of Judicial Questioning on Witness Credibility and Case Outcomes

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Consent form



The dissertation titled **“The Impact of Judicial Questioning on Witness Credibility and Case Outcomes”** prepared by **Imtiaz Ahmed Chowdhury ID- 2019-2-66-035** submitted to **Dr. NabaatTasnima Mahbub, Assistant Professor, Department of Law** for the fulfillment of the requirements of Course 406 (Supervised Dissertation) for LL.B. (Hons.) Degree offered by the Department of Law; East West University is approved for submission.

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Signature of the Supervisor

Date:

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Declaration

I, Imtiaz Ahmed Chowdhury, bearing student ID: 2019-2-66-035, declare that the work in this dissertation titled “The Impact of judicial questioning on witness credibility and case outcomes” has been carried out by me. This is my original work and the information used for this research has been duly acknowledged. I have not published this work in any Journal, Newspaper, or Article.

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Abstract

In our legal system, the range of questions that judges can ask is restricted. Our legal proceedings are impacted by a judicial inquiry. It is imperative to guarantee that competent witnesses are questioned by the judges. This study attempts to assess the significance of the witness's credibility and the judicial interrogation. Witness credibility and case results are impacted by the questions asked by judges. The qualitative approach used in this study was based on both primary and secondary data. The study intends to determine the weaknesses in our legal system's judicial interrogation practices as well as assess the credibility of witnesses in Bangladeshi and foreign courts. Our legal system prohibits a judge from using his discretionary authority to interrogate a witness. To testify in court, witnesses must also possess sufficient credibility. We can improve the jury system or grant judge's greater authority so they can interrogate witnesses in any instance.

List of Abbreviations

| | |
|------|--------------------------------|
| CrPC | The Code of Criminal procedure |
| CPC | The Code of Civil procedure |
| PW | Plaintiff's Witness |
| DW | Defendant Witness |

Chapter 1

Introduction

1.1 Background of the Research

It is often accepted that judges' backgrounds and worldviews have an impact on their judgments. The research evaluates the impact of judicial background on the resolution of cases from the daily proceedings in three federal trial courts by using the fact that judges randomly distribute their cases. Contrary to the conclusions of political science about the role of ideology on published opinions, we find little evidence that judges make different decisions in relation to the majority of case outcomes. Judicial decisions are not significantly predicted by the judge's individual characteristics.

Though there is a gap that may be a crucial reason why judicial inquiry is crucial, precedent can be followed in other cases. When it comes to comparable facts, a precedent is followed, but no one can guarantee that the new fact is precisely similar to the prior fact. When the courts see it and interrogate the parties, they are able to determine if the circumstances are similar enough to follow precedent or not. If they are satisfied, they can use the precedent under those circumstances.¹ Judges have the discretion power to put any question at any witness or party at any time he pleases to determine the fact and to ensure the justice of law.²

The role of judges in the courtroom is vital. They have the responsibility to put questions to the witnesses and clear the points and ensure a fair and impartial trial. Through this research we can show how judge's questions can affect perceived credibility of witnesses. Witness credibility is a fundamental element to determine the persuasiveness of testimony.

¹ Orley Ashenfelter, Theodore Eisenberg and Stewart J Schwab, "Politics and the Judiciary: The Influence of Judicial Background on Case Outcomes" (1995) 24 *The Journal of Legal Studies* 257
<http://dx.doi.org/10.1086/467960>>accessed on 10th November 2023

² Obaidul Huq Chowdhury's , *The Evidence Act (Fifth Edition,2016)* 575

1.2 Research Question

What are the impacts of judicial questioning by judges and its implications on witness credibility and outcome of cases?

The main purpose of this is to analyze the effects upon witnesses when they are questioned by judges.

1.3 Research Justification

The research on that topic is important because there is no specific research that has been done on that matter. Judicial questions are an essential part of the legal process, as it contributes to expediting legal procedures by revealing the truth, guaranteeing impartiality, and upholding the principles of the rule of law in the courtroom. The main purpose of court questioning is to determine the truth from individuals. Well-versed judges could reveal concealed facts and inconsistencies in addition to demonstrating a case or rendering judgments.

When a judge has the discretion to ask any question of any of the parties and they are required to respond, it becomes more difficult for anyone to conceal any circumstance or truth. This is why judicial questioning is useful in identifying factual discrepancies. Not only occasionally told the truth but also had the ability to expose any false information intended to deceive the court in the interests of justice. When judges put questions to witnesses, any judgments or facts that come from those questions can serve as a precedent for future cases of a similar nature. There is no research has been done on that topic so it need to be clear to all legal persons and authorities and it is important enough to know the effect of judicial questioning in a case judgments and to reveal facts.

1.4 Research Methodology

The research will be conducted by following qualitative method. Primary sources will be statute, act, case laws, and judicial decisions. Secondary sources will be books, journal article, online resources etc.

1.5 Literature Review

Mohammad Nazrul Islam in his book, “Reflections on the law of Evidence” describes the concept of judicial questioning and the classifications of judicial questioning on the basis of the relevant sections of the Evidence Act, 1872 and case laws. The author talks about the power of the judges to question the witnesses and also the questioning which are called judicial questioning. The history of judicial questioning was briefly discussed by Brand, Paul A, Paul Brand and Joshua Getzler on their “Judges and judging in the history of the common law and civil law”. Here they describe the history of judicial questioning from ancient period to modern times. And Abu-El-Haj in his book Tabatha says the judicial dependency on constitutional interpretation. He also said that though judges are more eligible to interpret the constitution or any fact, it is not his duty all time to interpret the constitution or the fact all time for parties or their pleader. Larsen and Allison on their “confronting supreme court fact findings” discussed about the power of Supreme Court to find the facts if they think that parties are not done enough. They also said that judges have the discretion power to ask questions when they please. And by asking the questions they can find the true facts and can judge the facts fairly.

1.6 Scope and Limitation of the study

A significant portion of the study will be based on online resources, such as journal papers and publications. It will also be dependent upon statutes, case laws, and books. Due to time limitations, it was not able to visit the courtrooms and view the whole spectrum of contexts. Another limitation of that research is the lack of information or materials.

1.7 Dissertation Outline

The impacts, types and the factors of judicial questioning on witness credibility will be the topic of the research study.

The second chapter will be based on the concept of judicial questioning, historical background, categories of judicial questioning and the importance of judicial questioning in legal proceedings.

The third chapter will be based on witness credibility and judicial questioning. The discussed matter will be the role and importance of witness in legal proceedings, factors affecting witness credibility and impacts of judicial questioning on witness credibility and case outcomes.

The fourth chapter will be focused on relevant legal principles and provisions in relation to judicial questioning in Bangladesh, relevant legal principles and provisions on witness credibility, challenges of judicial questioning in facilitating witness credibility and case outcomes and comparative analysis.

Finally, in chapter five there will be the findings and the recommendations of the research paper.

Chapter 2

Judicial Questioning: Concept, Background, Principles and Provisions

2.1 Introduction

A judge's discretionary power to interrogate witnesses can be very important in all types of cases. He is empowered to ask any questions he wants to any witness of any party at any time. Judges consider the case in its entirety and examine all its parts. There are three phases of examining a witness. Every component requires close observation, which they do so. Judicial questioning is the process through which judges ask questions when they are doubtful of anything. Examination in chief, cross examination and re-examination is also known as judicial questioning. Discretionary power is important for the ends of justice. From this chapter we can know how judicial questioning helps to get the equitable.

2.2 Concept of Judicial Questioning

Judicial questioning implies that in a judicial proceeding the judge or magistrate can ask any question to gather information or any facts that can be helpful to their judgment. There are some purposes of judicial questioning. As it helps to remove ambiguity and judges get a clear knowledge about the facts of the case and what type of remedy they want, in one word what is their expectation towards court.³As judges and magistrates' discretion power there are some other questions which are asked by the pleader in trial proceedings. Those are known as examination in chief, cross examination, and re-examination.

2.3 Historical Background of Judicial Questioning

Judicial questioning is now well developed by the evolution of time. Though it is now well developed but it has always been there in the legal system. In English common law system, the jury system separated the jury's and judge's adjudicative roles. The jurors determined the facts, while the judges decided the legal issues. The English common law arose with a restricted or diminished conception of the judicial duty because of separating the judge from fact finding. A judge who is not allowed to gather facts is so removed from the central duties of adjudication

³ The Evidence Act, 1872 (I of 1872), section 165

that he bears only a secondary responsibility for the court's ruling. Judges have no power to find the facts by asking questions as they think fit.

In the common law legal procedure from Middle Ages Judges are increasingly in charge of making decisions. The European tradition of adjudication was not successful in becoming the route taken by England's judiciary. Rather, during the early modern era, English judges gradually gained adjudicative authority by creating jury control strategies that gradually gave the bench actual decision-making ability. The twentieth century saw the end of civil jury trials as a result of this process of shifting authority within the division of court. The twelfth and thirteenth centuries saw the development of the Roman legal system in church courts, which later extended to secular courts. The jury was at that time free. The judges were entirely accountable for the law and the facts, and they were trained. In a case with disputed facts, the judge's responsibilities included listening to arguments from both sides and their solicitors, cross-examining witnesses the parties selected, gathering documentary evidence, and issuing a written decision. The decision ought to include the reasoning for the decision. The court was empowered to make inquiries, carry out investigations. In a sense judges hold the power to put questions and find the facts.

While the jury was free to decide matters of law during the pretrial pleading phase, the jury trial served as the means of fact-finding. The jury was given the authority to make decisions, the trial judge was not the primary source of information regarding the evidence or the jury's reasoning, and the fact findings of the jury were essentially final and could not be challenged. Early common law prevented the creation of any functional system in addition to excluding the trial judge from any meaningful involvement in fact-finding.⁴The development occurs day by day. Now judicial questions have a great impact in fact findings and the judgments.

2.4 Opportunities for Judicial Questioning of the Witnesses during the Examination

There are three categories of judicial questioning; firstly, examination in chief- when the witness is examined by the party who calls him; secondly, cross examination - when the examination is

⁴Brand,Paul A, Paul Brand, and Joshua Getzler,Eds.” Judges and judging in the history of the common law and civil law” From antiquity to modern times [2012] Cambridge University Law press PL 67
<https://www.cambridge.org/core/books/abs/judges-and-judging-in-the-history-of-the-common-law-and-civil-law/judges-and-judging-in-the-history-of-the-common-law-and-civil-law/9298589DE82985B8AEE85DCB34DA3A15>> accessed on 29th November 2023

done by the opposite party and finally, re-examination - when the party recall the witnesses for examine again who calls them earlier as well called re-examination.⁵

The purpose of the examination in chief is to establish the facts of the case and the question might be asked should be relevant to the fact. In cross examination there is no binding upon any party to ask any questions. Both the parties enjoy flexibility on that. The main purpose of the cross examination is as follows-

1. To bring out the truth
2. To destroy the opponent's case
3. To expose the infirmity of the opponent case.
4. To remove diminishes and explain any suspicious and also to establish the credibility.⁶

In Zar vs Najmun Nisa case it says that if any statement by defendant is not questioned by the plaintiff in the cross examine or if he fails. It means evidence has been accepted by the plaintiff.⁷In Muhammad Shafi vs state it is observed that the purpose of cross examination to clarify and disclosed the matters to the court where witness may wish to conceal or confuse the matters from the court.⁸Where it is quite clear that cross examination plays an important role to a case. There is an examination which are done by the court is also called judicial questioning. Court can ask any question when it thinks necessary no party can make an objection or any cross examination without the permission of the court.⁹In Balashri Das Sutradhar case the judgment was when the defense is fails to clear the fact judge can put questions to bring out the fact and it is true that section 165 of the Evidence act gives very wide power and the power should be exercised with care.¹⁰

2.4.1 Relevant Legal Principles and Provisions on Judicial Questioning

The Evidence Law, 1872describes judicial questioning. Section 137 from where the judicial questioning starts with the examination in chief. It means the examination of a witness by the party who called him. Section 137 also says about the cross examination and that is examination

⁵ The Evidence Act,1872 (I of 1872), section 137

⁶ Muhammad Nazrul Islam, Reflections on the law of Evidence,(Banglabazar,Dhaka Kamrul Book House,4th edition,2022) 499

⁷Zar Jan vs Najmun Nisa [1969] PLD 119

⁸ Muhammad Shafi vs State [1966] 19 DLR SC 216

⁹ The Evidence Act,1872 (I of 1872),section 165

¹⁰ Balashri Das Sutradhar [1962] 13 DLR 289

by the opposite or adverse party and the re-examination is the cross examination of a witness by the party who calls him. ¹¹Section 138 is about the orders of examinations. This determines the sequence which examinations or questioning process will be held.¹²Section 141 deals with the leading questions. Leading questions are called those questions in which there is an expected answer.¹³Sections 142 clarify when leading questions should not be asked. It is said that at the time of re-examination and examination in chief no leading question can be asked without the permission of the court.¹⁴Section 143 says that in cross examination leading questions can be asked.¹⁵Section 146 said that the questions are valid when the questions asked in the cross examinations intended or effects the veracity or valuation or the credibility of that witness. These are not applicable in the case or rape or attempt to rape.¹⁶Section 148 said about the power of the judge to determine the appropriate questions and when a witness is compelled to answer the questions.¹⁷Section 149 says that no questions can be asked without the reasonable ground.¹⁸Section 151 says that no scandalous questions can be asked without the necessity of the facts.¹⁹Section 152 says that no questions can be asked to insult anyone.²⁰Section 165 says about the judge's discretion power about to call for any documents or witness towards the court.²¹Section 166 says about the power of jury to ask questions by the leave of the judges.²²These all the laws and provisions regarding the judicial questioning.

2.4.2 Relevant Legal Principles and Provisions on Witness Credibility

There are some provisions that discussed about the credibility of witness in The Evidence Act, 1872. Section 118 of The Evidence Act, 1872 said about the witnesses who are credible or competent to the court. According to this section all persons are credible towards the court if they are able to understand the questions of the court and able to reply.²³Section 119 said about

¹¹ The Evidence Act,1872 (I of 1872) section137

¹² The Evidence Act,1872 (I of 1872) section138

¹³ The Evidence Act,1872 (I of 1872) section141

¹⁴ The Evidence Act,1872 (I of 1872) section142

¹⁵ The Evidence Act,1872 (I of 1872) section 143

¹⁶ The Evidence Act,1872 (I of 1872) section 146

¹⁷ The Evidence Act,1872 (I of 1872) section 147

¹⁸ The Evidence Act,1872 (I of 1872) section 149

¹⁹ The Evidence Act,1872 (I of 1872) section 151

²⁰ The Evidence Act,1872 (I of 1872) section152

²¹ The Evidence Act,1872 (I of 1872) section165

²² The Evidence Act,1872 (I of 1872) section166

²³ The Evidence Act,1872 (I of 1872) section 118

the dumb witness. From that section dumb witness is also a credible witness if he is able to make understand the court by giving evidence by other manners.²⁴

2.5 Importance of Judicial Questioning in Legal Proceedings

Judicial questioning is important in any legal proceedings all over the world. It can't be denied. Pleaders of the two parties argue and interpret the issues and facts in legal proceedings. Advocates debate the fact of the case and interpret it as they wanted to present before court and at the end the court is here to give the final say. However, it is impossible to evaluate the widely held belief that the Court is particularly has the duty to interpret the law or investigate a fact of the Court's claim to finality without having an in-depth understanding of what legal interpretation requires.²⁵ So the court is there for the final say. Hence the advocates argue and defend their client by judicial questioning. Like examination chief is there for establishing the fact through the questions asked by the advocate and the answers of the witness. Then a defendant or opposite party can cross examine the fact and verify the authenticity of the case and tries to prove the facts on their favor. When all of these judicial questions are done, and the court is not satisfied a judge can ask the questions that he thinks necessary. By that judge interprets the situations and observed those answers closely.

Many of the Supreme Court's most important judgments vary on factual issues. What happened between the parties is not relevant to these facts. Judges use the adversarial system to gather their facts. The parties can give the court adequate information through testimony to address any fact that is crucial to the case's outcome. Courts only consider the adversarial system to guide their decisions, even for findings the facts, however, Judges reach beyond the four corners of the parties. When they believe the parties have not done enough. Such outside evidence is not now restricted by any federal law. Courts have the authority to look beyond the evidence records.²⁶ As judges have the power and when they understand that parties are not successful to satisfy the court. Without enough justification judgment can't be passed. Judges out

²⁴ The Evidence Act, 1872 (I of 1872) section 119

²⁵ Abu El-Haj, Tabatha, "Linking the questions: judicial supremacy as a matter of constitutional interpretation" [2011-2012] 89 Wash. U.L. Rev. 1309

https://openscholarship.wustl.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=3349&context=law_lawreview accessed in 28th November 2023

²⁶ Larsen, Allison Orr, "Confronting Supreme Court Fact Finding". [2012] 98 Virginia Law Review 1255-1312 <https://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=2328&context=facpubs> accessed in 28th November 2023

of their power they ask for further evidence and questions are being asked towards the parties or witness to give a fair and reliable judgment.

2.6 Conclusion

At the end of this chapter, we are clear about the judicial questioning. From this chapter we can know the history of judicial questioning, the classifications and the importance of judicial questioning. As was said above, the Roman legal system, mediaeval trials, and common law all contributed to the development and positive shaping of judicial questioning. However, it was there for a long period and having a great impact on judgments.

Chapter 3

Witness Credibility and Judicial Questioning

3.1 Introduction

Witness credibility means the value of the witness in the courtroom. It can be said by another term competency witness. As per section 118 of the Evidence Act, 1872 all witnesses are competent to the court otherwise they are not capable to understand the questions and also doesn't have the capacity to give appropriate answer to the questions.²⁷ Judicial questioning and witness credibility plays a vital role in legal proceedings. Witness credibility is defined by the reliability of the information or how much value he has on the court. Judicial questioning is the whole questioning process which is asked by the lawyers and judges to get the true and accurate fact. By identifying that they are supposed to give their judgment.

3.2 The Role and Importance of Witnesses in Legal Proceedings

The role of a witnesses in legal proceedings are very crucial. They help the judge to determine the truth. But they also need to be testified by the law as to whether they have the competency or not. In that case oral evidence can be a matter of concern. All witnesses have credibility as they are capable of understanding the question and can give answers. As section 119 of the Evidence Act, 1872 says that when any witness is not capable to speak or he is dumb he can also be an competent witness by making his statement clear and intellectual, it can be writing or something else but it will count as an oral evidence.²⁸ So a dumb witness can also have the credibility towards the court.

At first perception, the witness's part in history appears to be minimal. They authorize transactions, papers, and signatures; they escort the principals to exchange and transition sites; they authenticate and verify. Most importantly, witnesses must endure, produce, and retain memory. Witnesses in the field of legal history address the distinction between action and observation in all these ways. Witnesses are not subject to prosecution and are essential to the development and structure of disputes. Witnesses in this context, provide credible testimony.

²⁷ The Evidence Act, (I of 1872), section 118

²⁸ The Evidence Act, 1872 (I of 1872), section 119

Furthermore, the varying dynamics and styles of testimony mirror the various demands as moral, political, and legal made on witnesses. The witness's report has to stick to a certain level of accuracy. Furthermore, it is the witness's duty to confirm that this is, in fact, how the incident occurred and not any other way.²⁹ They help the court to determine the truth and it helps to find the actual situation. A witness partly verifies or denies the fact by giving evidence. Oral and direct evidence are given by the witnesses. A particular incident or things happened who saw that incident to be occurred and refers the court can be called direct evidence.³⁰ As witnesses are giving oral evidence, they are verifying the facts that they claimed to be true towards the court. Though both sides of the witnesses are there and try to stand the judgment in favor of them, both of the parties can't be right and accurate. The court determines the guilty party and pronounces judgment against them.

3.3 Factors Affecting Witness Credibility

When a witness is called to depose and submit to the court the facts they have witnessed, that is when their credibility is assessed. Although juries and judges assess a witness's credibility in different ways, a number of elements influence their assessments. These might prevent the achievement of equitable decisions if they still need to be discovered. Findings support the idea that juries are regularly influenced, even by apparent nothing factors, when evaluating the credibility of witnesses. People attempt to influence the perceptions of others regarding a person, object, or event by regulating and controlling information during social interaction; this is known as "impression control." It may be a conscious or unconscious process. In terms of cognitive inferences, inference is a cognitive process that is employed for both common sense reasoning and scientific understanding. The impact of nonverbal behavior, the signs of low motivation, and inferential errors are further processes. All of these involve the application of cognitive techniques that may lead to the creation of erroneous causal causes. Many authors have established an impact between gender and the evaluation of credibility; women, for instance, are socially and expressively educated. As such, women are expected to smile more than males, while men are taught to suppress their emotions and maintain objectivity. This assumption gives rise to a common bias in which the degree to which a witness's nonverbal behavior relates to an

²⁹ Mark D. Jacobs, Nancy Weiss Hanrahan, *The Black Well Companion to the Sociology of Culture* (United States, Black well publishing Ltd, 1st edition, 2005) 303

³⁰ The Evidence Act, 1872 (I of 1872) section 59

assumed gender norm determines how credible they are deemed to be. Other writers have shown that judges' considerations can occasionally operate on the behavioral and verbal domains and that this combination may result in a decision that lacks clarity. Oral evidence may have less of an impact if the witness's actions are more closely examined. Jurors may be biased toward oral arguments when drawing conclusions about a witness's credibility based on nonverbal communication.³¹

3.3.1 Gender

The gender of the witness is another factor that affects judges. Indeed, it has been shown that people seem to view men as considerably more credible than women. Furthermore, the degree of credibility assigned to women changes according to how pleasing they are; so, female witnesses who are more agreeable are regarded as having greater credibility. Many authors have established an impact between gender and the evaluation of credibility; women, for instance, are socially and expressively educated. As such, women are expected to smile more than males, while men are taught to suppress their emotions and maintain objectivity. This assumption gives rise to a common bias in which the degree to which a witness's nonverbal behavior relates to an assumed gender norm determines how credible they are deemed to be. The age and gender distribution of the jury also have an impact on the verdict.³²

3.3.2 Attitude

Many writers have shown that judges' considerations can occasionally operate on the behavioral and verbal domains and that this combination may result in a decision that lacks clarity. Oral evidence may have less of an impact if the witness's actions are more closely examined. Jurors may be biased toward oral arguments when drawing conclusions about a witness's credibility based on nonverbal communication. Being confident is yet another crucial element. Judges appear to be using it without realizing it. It causes one to regard a deposition given with little security as misleading and associate a confident deposition with one that is honest and truthful. Witnesses who appear quite certain are therefore regarded as more credible. Numerous studies have shown the strong persuasive influence of a testifier's confidence. They have looked at case

³¹ Antonio Ludici ,Miriam Stefano, Davide Binato, “ Factors influencing the assessment of witnesses in juridical contexts: a literature review. Legal, civil ,and psychological implications ”[2023] Vol 25 no 2 The Journal of Forensic practice 82-92 <https://www.emerald.com/insight/content/doi/10.1108/JFP-02-2022-0009/full/htm>> accessed in December 8, 2023

³² Ibid

studies where the testimony of extremely self-confident individuals led to the conviction of innocent criminals.³³

3.3.3 Age

A witness's age may have an impact on their credibility or the significance of their testimony. When they can tell facts clearly and don't hesitate to answer direct questions, children and teenagers are viewed as more reliable witnesses than older ones. Children's testimony, however, is usually viewed as untrustworthy and has no bearing on the judge's decision. The aforementioned circumstance particularly arises when kids or teenagers provide eyewitness testimony regarding criminal activity. However, many judges think that a traumatic occurrence entails greater stress and cognitive activation, which is more likely to improve the victim's memory and lead to a more accurate story. As a result, they are seen as credible as an adult when testifying as the victims of a crime. Elderly witnesses are respected and valued in the legal system. But sometimes, especially when they have to disclose something they have observed, their testimony is not taken seriously. An older witness may be more likely to sound false alarms, be less certain of their recollections of incidents, and provide less accurate descriptions than a younger witness. Furthermore, despite the fact that older women are perceived as more honest than younger ones, their age is taken into account when evaluating them, which makes their testimony less accurate and credible.³⁴

Witness credibility depends on some facts like self-confidence of the witness, age, gender, emotion of the witness. These factors influenced judges not only by the evidence but also by the performances of the witness. As a witness who is nervous when he is giving the testimony towards the court are less credible and on the other hand who is confident and fluent while proceedings are much valuable and credible towards the court.³⁵

3.4 Conclusion

The credibility of the witness and the judicial questioning both of them are equally important to the court proceedings. Without credible witnesses no disputes can be solved. As well as without

³³ Ibid

³⁴ Ibid

³⁵ Ellen Wessel, Dag Erik Eilertsen , Svein Magnussen, "Credibility of the emotional witness : A study of ratings by court judges" [2006] 30(2) Law and Human behavior 221
https://www.researchgate.net/publication/6998427_Credibility_of_the_Emotional_Witness_A_Study_of_Ratings_by_Court_Judges> accessed in December 9 , 2023

judicial questioning, witnesses can't be tested by the judicial process and the court can't verify the facts.

Chapter 4

Case Outcomes and Practical Implications

4.1 Introduction

Judicial questioning and witness credibility both are very close to each other. These give a shape to our judicial proceedings. Determining the facts, verification of the evidence or witness, value of the witness or evidence produces in the court and at last giving the judgment. The whole process relies on judicial questioning and witness credibility.

4.2 Cases regarding judicial questioning and witness credibility

There are some cases regarding judicial questioning and witness credibility. In *State v Balashri Das Sutradhar* Section 165: The judge's authority to cross-examine witnesses at the appropriate time. It is true that the judge has extremely broad authority under section 165 of the Evidence Act to interrogate any witness at any time to find or gather proof of particular facts. But usage of this power must be done quite carefully.³⁶ In *Phani Bhusan Halder v State* Oral testimony alone does not establish the existence of a material item; the court may order its production by section 165.

The purpose of Section 165 of the Evidence Act is to provide the Court with the necessary power to discover the truth. The thing may be produced upon the court's order to find or gather evidence of relevant information. If the important fact is established solely through oral testimony without introducing the incriminating individual in court, the court's finding regarding a substantial matter that is the subject matter of the case may need to be revised. Even the Custom Inspector in this instance failed to specify if the clothing that was seized had Indian origins. After reviewing the available documentation, we discover that the grievance has merit. Specifically, it claims that the trial was flawed since the seized objects were not presented to the court, which has negatively impacted the appellant.³⁷

³⁶ *State vs Balashri Das Sutradar* [1961] 13 DLR289

³⁷ *Phani Bhusan Halder v. State*[1975] 27 DLR254

In *Shamsul Haque v State* it was said that Section 118: If the victim's evidence is deemed credible and reliable and is free from any defects or inherent disqualification, the prosecution is entitled to believe that the offender committed a carnal offence and will condemn them even in the absence of material confirmation.³⁸In *Abdul Quddus v. State* it was stated that section 118 If a child witness is able to comprehend the question and provide a knowledgeable response, then they can be trusted as well.³⁹In *Abdul Kashem v State* it was said that PWs 12 and 13, despite their young age, responded intelligently to questions and were determined to be normal and natural witnesses, as per Section 118 Child Witness Competency. A competent witness is one who can comprehend questions and respond to them properly.⁴⁰

In *Gadu Mia v State* it was held that Section 118: There is no doubt about a child's capacity to testify. All that needs to be done is carefully and cautiously examine his evidence to see if there are any discrepancies. It is wise to look for confirmation before relying solely on his proof for conviction.⁴¹In *Forkan Miah v State* it was held that Section 118 Even though PW 2 was a child witness, he was injured by the appellants during his father's execution. Since the witness provided accurate testimony during cross-examination and did not admit it, the case's facts should be accepted despite PW 2's age.⁴²In *Seraj Miah v State* the judgment was held that Section 118: Any individual who is capable of understanding the issues posed to them or providing logical responses is qualified to testify in court. ⁴³

4.3 Impacts of judicial questioning and witness credibility and case outcomes

Many previously unheard-of facts and pieces of information can be raised through court interrogation. To ascertain the truth, questions can be stated differently when questioning witnesses in court. Lawyers must prepare questions on this topic and keep an eye on their opponents' court appearances. Judges and opposing lawyers may become uncomfortable in response to these questions. They are raising concerns about inappropriate questions and answers. These questions need to make sense logically. The substantive law's material issues

³⁸ *Shamsul Haque v. State* [2000] 52DLR255

³⁹ *Abdul Quddus v. State* [1991] 43 DLR234

⁴⁰ *Abdul Kashem v. State* [1990] 42 DLR378

⁴¹ *Gadu Mia v. State* [1992] 44 DLR 246

⁴² *Forkan Miah v. State*[1995] 47DLR 149

⁴³ *Seraj Miah v. State* [1997] 49DLR 192

must be taken into consideration while asking all questions. It is important to ask leading questions effectively as well. It is the kind of question where lawyers already know the answer.

On direct examinations, it is appropriate to ask leading questions. Once a witness has given a statement, it might be difficult to add to, alter, or erase. The client of the second examiner is typically harmed by the first witness's account. Because when the first witness provides the devastating testimony, the examiner needs the witness to oppose. Thus, it is essential to ask simple questions that establish the facts of the case throughout the leading question portion. A witness should not be led mistakenly, and occasionally the cross-examiner's questions need to be regulated. The court should impose these restrictions or conduct witness examinations. In general, courts bound witnesses to objectivity by not calling them. However, a judge's question can raise any information that is difficult to call biased.⁴⁴

The importance of any given witness in court proceedings is known as witness credibility. As there can be more consequences for smiling behaviors between male and female witnesses in the courtroom. According to numerous studies, people express different smiles depending on their gender, particularly when they are aware that they are being watched. Compared to men, women usually smile more frequently. Furthermore, not only do observers assume that women smile more than men do, but women also smile more frequently and are expected to smile more than males. Male witnesses who grin may become less credible since it is not customary for men to smile and because it may go against their gender norms. The jury may find it more acceptable for female witnesses to smile than for male witnesses to do so. Regardless of whether they were laughing or smiling, women were generally regarded as more pleasant than men. Credibility assessments may be impacted by this gender disparity in smiling, with smiling female witnesses likely to receive higher ratings and smiling male witnesses likely to receive harsher criticism. Smiling can affect a witness's perceived credibility, which can be evaluated using the Witness Credibility Scale. This measure assesses overall credibility in addition to the four dimensions—likeability, confidence, trustworthiness, and knowledge—that have been scientifically linked to witness credibility. Smiling actions are likely to affect

⁴⁴ Mark P. Denbeauy, D.Micheal Risinger, “ Questioning questions : Objections to form in the interrogation of witnesses {1979-1980} 33: 439 ARKANSAS Law Review, P441-455 <https://heinonline.org/HOL/LandingPage?handle=hein.journals/arklr33&div=24&id=&page>> accessed on 12th December 2023

perceived credibility if they affect observers' assessments of likeability, confidence, trustworthiness, and expertise.

In the courts, good-looking defendants are commonly viewed as less guilty, convicted less frequently, and granted more leniency. It has also been discovered that attractiveness and trustworthiness are favorably correlated. It was discovered that raters thought that people who were smiling were more "good, honest, real, obedient, blameless, sincere, and admirable." Smiling affects how witnesses are viewed to be confident and knowledgeable.⁴⁵The scale of witness credibility doesn't apply in all circumstances because there should be a number of cases where any evidence or witness are rarely be found. The question will arise in that situation that what will happened to these cases. As there is a eyewitness who is dumb. Because of the lacking credible witness should the case be stopped or without any proceedings the defendant or the plaintiff will get the order or judgments in their favor. In these types of cases the dumb witness will be the credible one if he can describe the fact by giving his statement in another manner but understandable for the court. So, the impacts of credibility of a witness are also important. Those who are giving evidence or their own statement as a witness, how much reliable that statement carries in the court proceedings are also a matter of concern.

4.4 Comparison with the laws of other countries

Different countries have different laws, regulations and customs. Each country has their own way to run their system. As some countries are based on constitution and there are country like England that has no constitution. Each country has their own mechanism to maintain their law and order by enforcing and producing the laws. We will look the system of India and USA how their judicial system is worked on their country.

4.4.1 India

In India it has similarities like Bangladesh. It has constitution and the judicial body is separate from the legislative and executive. Judicial questioning in Indian court system According to

⁴⁵ Jacklyn E. Nagle, Stanky L. Brodsky , Kaycee Weeter, " Gender , Smiling and witness credibility " Gender , Smiling and Witness Credibility in the Actual Trails" [2014] 32(2) Behavioral sciences and the law, P195-204 https://www.researchgate.net/publication/260802184_Gender_Smiling_and_Witness_Credibility_in_Actual_Trials> accessed on 13th December 2023

Section 165 of the Indian Evidence Act of 1872, a judge has the express authority to examine witnesses about a specific case. The judge has a responsibility to learn the truth and is required to be fully informed about all the information that has been submitted to him. To ensure a just result or judgment, the judge must cross-examine witnesses on issues that the attorney has knowingly chosen to ignore or omit. The lawyer has the right and obligation to interject questions if the judges are dissatisfied with how the witness is being questioned.⁴⁶

A judge's job is to find the truth, and in order to do so, he may question a witness at any time and in any manner regarding any fact relevant to the case or unrelated, but he must do so without infringing on the counsel's role or seeming to scare the witness. The judge may interrogate anyone at any moment, and if he feels that he has unclear the case, he should continue the examination, asking as many questions as necessary to get the whole story. The parties or their representatives may object to any such question or order under Section 165 of the Indian Evidence Act of 1872. They may also cross-examine any witness regarding any response provided in response to any such inquiry without the court's permission. The judge has the discretionary authority to allow the witnesses to be cross-examined.⁴⁷

4.4.2 USA

Ordinary people participate as decision makers in judicial cases in several nations. Certain nations involve their citizens in the legal system as impartial lay juries or judges who render judgments on their own. Other countries' legal systems combine judges with and without legal training to make joint decisions in mixed tribunals. Various arguments have been put up in favor of lay involvement in the legal system, regardless of methodology. Proponents assert numerous beneficial effects: It promotes the legitimacy of the legal system overall, makes decisions better, reduces the impact of biased or dishonest judges, keeps the legal system in line with community ideals, and represents the variety of citizen opinions and experiences. Adversarial systems are more likely to use jurors, inquiry-based systems are more likely to use mixed courts.⁴⁸

⁴⁶ The Indian Evidence Act, 1872 Section 165

⁴⁷ Ibid

⁴⁸ Valerie P. Hans, "The Jury Role in administering Justice in the United states, U.S jury reform: The jury and the Adversarial Ideal"[2002] 21(85) Saint Louis University public law review PL85-86 <https://scholarship.law.slu.edu/cgi/viewcontent.cgi?article=1382&context=plr>> accessed on 22th December 2023

While most courts do not inform juries that questioning witnesses is an option, there has been an increase in the practice of juror interrogation of witnesses in court. The Federal Rules of Evidence neither permit nor prohibit juror questioning of witnesses during trial. The decision of whether to allow juror questioning and how to conduct such questioning is left to the judge's discretion. In the USA jurors are allowed to ask questions towards witnesses. Though the adversarial process seems idealized in theory, it is not always the case that lawyers provide all relevant facts clearly and concisely. Judges can cross-examine witnesses when they provide ambiguous, false, or deceptive information. The same privilege ought to be granted to jurors.⁴⁹

The idealized characteristics of the adversary system are not fully realized in reality. The judge, prosecution, and defense lawyer are encouraged to cooperate and share information through regular interactions within the courtroom. Legal ideas about the judiciary in adversarial systems come to the conclusion that judges do not have to act as door stops. Judge John Sirica became persuaded that the Watergate burglars were covering up to protect others and that the adversarial questioning was insufficient during the famous 1970s burglary trial that resulted in Richard Nixon's resignation as US president. He personally questioned a significant number of the witnesses related to the offense during the trial. The jury found the Watergate burglars guilty, and one of the arguments used in the appeal was that Judge Sirica had exceeded the limits of his authority by interrogating witnesses for a long time. Nonetheless, the appellate court maintained the decision, noting that even extended interrogation was appropriate given the adversarial nature of the legal system. The decision-making process of juries is not as passive as assumed by the idealized adversary model. It is untrue that juries are initially and consistently impartial throughout the trial, and that they agree to the evidence put out by the opposition. Jurors approach their decision-making work actively, just like the rest of us, in social cognition and decision-making. According to the story model of jury decision-making, which Pennington and Hastie established and validated, juries bring preconceptions to the trial and information that influences how they understand the facts. Jurors begin to consider facts and evidence early in the trial, weaving information into an engaging tale, or "story". Jurors often resolve contradictions and fill in the gaps in the evidence to support the narrative they are trying to tell.

⁴⁹ Ellyn C. Acker, "Standardized procedures for juror Interrogation of witness" [1990] 1990(1) University of Chicago Legal Forum PL 557-558
<https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1080&context=ucf>>accessed on 22th December 2023

In fact, they might disregard contradicting data. Throughout the trial, this explanation-based method of decision-making is used. Throughout the trial, at least some jurors confer with other jurors or outsiders, raising additional questions about the assumption of jury passivity in an adversarial system. The frequency of this occurrence is unknown. It was estimated by Loftus and Leber that approximately 10 percent of jurors had discussions that were not allowed. According to research conducted on civil jurors in Arizona, a sizable minority of jurors acknowledged discussing the case with friends, relatives, and one another throughout the trial.⁵⁰

4.5 Conclusion

Different Countries has different system of law. There are countries like USA follows the adversarial judicial system and Bangladesh follows the inquisitorial system. As these two countries there are other countries that has different judicial system. It is important to ensure the fairness and neutrality of legal proceedings.

⁵⁰ Valerie P. Hans, “ The Jury Role in administering Justice in the United states, U.S jury reform: The jury and the Adversarial Ideal”[2002] 21(85) Saint Louis University public law review PL88 <https://scholarship.law.slu.edu/cgi/viewcontent.cgi?article=1382&context=plr>> accessed on 22th December 2023

Chapter 5

Conclusion

A crucial part of the legal system is judicial questioning. Many nations have distinct legal systems based on their laws and regulations, but the majority of them allow for judicial questioning. Establishing a verdict and obtaining the facts are very helpful. For a case to be decided, witnesses are crucial. The credibility of witness claims and the statements play a half role in the decisions. Evidence provided by a reliable witness is useful in deciding a case.

5.1 Findings of the Research

1. Judicial questioning has a great impact on fact findings.
2. The Evidence Act, 1872 gives wide discretion power to the judges to ask questions towards the witness and parties at any time.
3. Though it gives discretionary power, it is not the hard and fast rule. There is no other laws in Bangladesh that gives the power of judicial questioning.
4. The credibility of a witness is also important to decide a case because the court gives judgment on the basis of evidence and testimony.
5. There is a scale to measure the credibility of a witness by observing the nature of the person, age, gender and also gesture and postures as well.
6. A witness can also affect or change the observation of the judges.
7. Different countries have different judicial systems. Some countries followed the adversarial system, and some follows inquisitorial system.
8. In an adversarial system juror has to play a vital role where judicial questions and observation are observed by the juror and judges take the final call after the observation.

5.2 Recommendations

In Bangladesh, there is no obvious reason to be concerned about judicial questioning in a case. Our judges are not permitted to ask open-ended inquiries. In our nation, the range of judicial interrogation is extremely limited; it must be expanded. Except for The Evidence Act of 1872, no other law permits a judge to interrogate witnesses. Judicial questioning is not permitted in CPC and CRPC. The Evidence Act's section 165 should be changed to give judges more authority. They are not permitted to ask questions using discretionary power.

The jury system does not exist here. The jury system is essential to American legal proceedings. The jury system is another way to improve our legal system. Here, the juries will have the opportunity to examine any witness they deem essential and will report back to the judge on their observations. Following that, the judge will make a decision based on the jury's verdict. If we are unable to improve the jury system, we must grant judges sufficient authority to question witnesses in any way they see fit. Judges are typically able to identify the guilty party on the first day of the hearing, but the system prevents this. He must wait to hear from each party with their proof. Thus, either the jury system needs to be developed or the reach of judicial interrogation needs to be expanded by legislation and judges granted discretion.

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