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Admissibility of Expert opinion in the Court of Law

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Where the comprehension of a subject discipline requires specialist treatment, training, and a scientific perspective, expert opinion is extremely important. The Indian Evidence Act, of 1872 recognizes the value of an expert witness in aiding a judge in administering justice by allowing for the consideration of his or her opinion in court. The definition of an “expert” under the of Act, 1872 is restrictive and narrow, as an individual proficient in a domain not covered u/s 45 is not treated as an expert. This is the conclusion drawn from an examination of the evidentiary value of expert opinion through the lens of recent and leading judgments of the Supreme Court and High Courts. The expert testimony is flimsy and unconvincing. Without getting additional independent and trustworthy corroboration, it is not advisable to rely entirely on it.

Keywords: *expert, expert opinion, evidentiary value, testimony, evidence, admissibility.*

INTRODUCTION

The law of evidence is a cornerstone of the justice delivery system. The law of evidence seeks to influence the court's decision in every case. However, there are occasions when issues arise that go beyond the scope of common knowledge and understanding. There are instances when certain technical details are questioned, making it difficult to make a choice. Then an expert opinion is required at that point. Particularly in cases when the subject matter calls for technical or specialised expertise, the judge is not expected to be an expert in every discipline. In these

situations, the law of evidence permits an opinion as to the existence of the facts in dispute or facts that are relevant to a case from anybody other than the judge who has superior knowledge or expertise regarding the subject. Experts are those who possess the skills and knowledge needed to respond to those queries. These professionals are fundamental to the administration of the system of criminal justice. The view provided by these experts is referred to as expert testimony or expert opinion in a court of law.

If someone is requested to testify, it is assumed that they will have a factual connection to the case and not just be a third party. However, this rule has an exception. Despite having no direct link to the case, the experts are taken into consideration as witnesses. To help the court have a wider perspective and administer justice, the court requests the opinions of various experts on the issue. The justification for this is that it is impractical to expect the Judges to be sufficiently knowledgeable in every discipline. The concept of enabling an expert witness to give opinion evidence on the facts of the witnesses was approved by Lord Mansfield in the case of *Folkes vs Chadd*¹ in 1782, marking the beginning of the use of an expert witness in English law.² This article addresses the crucial issue of the relevance or evidentiary value of expert or third-party opinions in Indian courts. It also discusses what the courts look at when evaluating an expert's view, what factors are taken into account in cases, where the courts request an expert opinion, and how the law rules it.

WHO IS AN EXPERT?

Black's Law Dictionary states "An expert is a person who possesses peculiar skill and knowledge upon the subject matter that he is required to give an opinion upon". Collins Dictionary of Law defines an Expert, as "An expert is a witness who is allowed to give opinion evidence as opposed to evidence of his perception. This is the case only if the witness is indeed skilled in some appropriate discipline"³.

¹ *Folkes v Chadd* [1782] KB Doug 3

² Christopher M. Milroy, 'A Brief History of the Expert Witness' (2017) 7(4) *Acad Forensic Pathol* <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6474433/>> accessed 14 November 2022

³ WJ Stewart & Robert Burgess, 'Expert Witness' (*Collins Dictionary*) <<http://fdvn.vn/wp-content/uploads/2019/06/luu-ban-nhap-tu-dong-3-2.pdf>> accessed November 14 2022

The Indian Evidence Act of 1872 governs expert testimony in India from Section(s) 45 to 51. Section 45 provides *Opinions of experts*: The opinions of professionals in those fields are relevant facts when the court must decide a matter of foreign law, science or art, the identity of handwriting, or finger impression. And only when such opinions are offered by experts in the fields in question, skills that may be developed via thorough study, practice, and observation, are they considered to be valid. They are referred to as “experts.”⁴ Thus, it is clear that experts are professionals who have devoted their time and research to a certain field of knowledge on which they are asked for their opinions.

In *Bal Krishna Das Agrawal v Radha Devi and Others*⁵, an ‘expert’ was explained as, a person who has developed the ability to convey an opinion via training and experience, whereas an ordinary witness does not have this feature. An expert's testimony is that kind of testimony that is founded on knowledge and experience. Given the language of Section 45 of the Evidence Act, it is important that before a person may be referred to as an expert, there be evidence on file demonstrating his expertise in the subject matter and his possession of specific knowledge about it. He must have conducted in-depth research on the topic or gained unique experience in it. Therefore, before a witness’ testimony could be admitted, his expertise had to be established. This could be done by demonstrating that he had the required credentials or that he had developed specialised knowledge via experience.

PRINCIPLES OF EXPERT EVIDENCE

As per Phipson, the fundamental rule of the law of evidence is that only the strongest evidence should be presented in court. The Best-Evidence rule is the name of this principle. The term “Best-Evidence” refers to data gathered directly from a source. Second-hand and derivative evidence are prohibited. The opinions, deductions, beliefs, and simple hypotheses of witnesses are typically not admissible in court. The term “expert evidence” is the exception to the aforementioned rule. Based on the necessity principle, expert testimony is admissible. When a

⁴ Indian Evidence Act 1872, 45

⁵ *Bal Krishna Das Agrawal v Radha Devi & Ors* (1989) Al 133

question requires more than the average person's knowledge or experience, or when specialised knowledge, skill, or experience is required, the assistance of specialists is required.⁶ According to the ruling in *Khushboo Enterprises v Forest Range Officer*, it was held that "under Indian evidence 'expert evidence' is 'opinion evidence' and as a general rule, the opinion of a witness on a question of fact or law is irrelevant. The opinion of witnesses possessing peculiar skills (as of experts) is an exception to this rule"⁷.

Before expert testimony can be admitted, two things must be established:

- That the subject requires expert testimony; and
- That the individual concerned is an expert and that he is a genuine witness.⁸

FIELDS UNDER WHICH EXPERT OPINION IS ASKED

Foreign Law: An expert in that law may be called upon to inform the court of the applicable foreign law when the court must form an opinion regarding that law of a foreign country. In India, Section 38 permits the presentation of official books and reports on foreign law as proof. The law of a foreign nation may be clarified by an expert, but if it is outlined in that country's Code, it is the duty of the court in this country to interpret it as best it can. Therefore, foreign law is a factual issue that needs to be established.⁹ Supreme Court in *Hari Shankar Jain v Sonia Gandhi*¹⁰ stated that "Under Section 57(1) of Indian Evidence Act, 1872, the Court shall take judicial notice of, inter alia, all laws in force in the territory of India. Foreign laws are not included therein. Sections 45 and 84 of the Evidence Act permit proof being tendered and opinion of experts being adduced in evidence in proof of a point of foreign law."

Scientific Evidence: The scientific evidence that is presented in court should be supported by a scientific hypothesis or theorem. It should also be empirical and correctly recorded using the

⁶ Sarvesh Kumar Shahi & Sidhartha Sekhar Dash, 'Expert Opinion: Relevancy and Admissibility under the Indian Law of Evidence' (2020) 6(12) International Journal of Advanced Research in Management, Architecture, Technology and Engineering

⁷ *Khushboo Enterprises v Forest Range Officer* (1994) SC 120

⁸ Batuklal, *The Law of Evidence* (22nd edn, Central Law Agency 2018) 381

⁹ *Ibid*

¹⁰ *Hari Shankar Jain v Sonia Gandhi* (2001) 8 SCC 233

scientific method that is appropriate to the subject of study in question. Depending on whether the area of study is in the social sciences or the natural sciences, the norms and criteria for proof may be different.¹¹ Contrary to oral testimony, which depends on a witness's deposition, scientific evidence is demonstrative in nature. Comparisons were made between disputed footprints in blood found near a dead body and heading towards the restroom and the accused's prints recorded in printer ink in *Pritam Singh v State of Punjab*¹². The expert provided testimony outlining nine commonalities for the right foot and ten for the left foot, along with three differences in each case. The expert illustrated the differences by referring to the differing densities of blood and ink. It was decided that the comparison passed the test satisfactorily, and given the circumstances, it was established that the accused left these footprints in blood close to the scene of the occurrence. Criminal, paternity, environmental, and medico-legal cases' verdicts in court frequently depend on scientific evidence, the veracity of which may be subject to debate.¹³

Art: When a judge must express an opinion on a matter of art, the opinion of the individual who is specifically competent in that field is admissible.¹⁴ In *Ram Sampath v Rajesh Roshan*, the High Court of Bombay ruled that “The expert opinion on musical work (which is undoubtedly an art) is thus admissible and is one of the relevant circumstances to be taken into consideration while deciding the question whether the musical work of the defendant is identical or is the plagiarism of the musical work of the plaintiff”.

Medical Evidence: The concept of “medical evidence” refers generically to the facts provided by the doctor, whether in the post-mortem report, injury report, or oral testimony, in addition to the opinion provided by the doctor in light of the information submitted.¹⁵ However, the

¹¹ Himanshu Setia, ‘Evidentiary Value of Forensic Reports in Indian Courts’ (2016) 4(6) Research Journal of Forensic Sciences

¹² *Pritam Singh v State of Punjab* (1956) SC 415

¹³ Sandhya Verma & Anjum Parvez, ‘Institutional problems in the Indian judicial system relating to admissibility of scientific evidence: Causes and remedies’ (2021) 6(2) IP International Journal of Forensic Medicine and Toxicological Sciences

¹⁴ Batuklal (n 8)

¹⁵ *Bastiram v State of Rajasthan* (2014) Cri LJ 1761

medical opinion by itself just serves as an advisor and does not support or refute the prosecution's case¹⁶.

Forensic Evidence: In establishing the ingredients of crime, identifying the suspect, and determining the culpability or innocence of the accused, forensic science plays a crucial role. It's crucial to consider how the forensic analyzed data are delivered to the legal system. Based on probabilistic calculations, forensic evidence is rated for strength and weight.¹⁷

DNA Evidence: When there is a paternity dispute, the court has the authority to order that parties submit to medical examinations or provide blood samples for DNA testing. DNA testing is one of the crucial medical blood tests. The guidelines governing the power of courts to order blood tests have been laid down by the Supreme Court in *Goutam Kundu v the State of West Bengal*¹⁸.

Using samples taken from the crime scene, DNA technology is also used to identify the victims or the culprits, therefore it is not just used to determine paternity. The expert in the DNA report in *Pantangi Balarama Venkata Ganesh v State of Andhra Pradesh*¹⁹, a case of murder, suggested that the appellant's blood group and the blood group discovered on the pink shirt he was wearing were alike. The phrase "identical" was not used by the expert. The fact that the court did not record the conviction solely based on the testimony of DNA specialists was deemed to be of little relevance in this case.²⁰

Post-mortem Report: The postmortem report should indeed be utilised in conjunction with the testimony of eyewitnesses and stand alone as proof enough to find the accused guilty. The post-mortem report alone cannot be considered by the court to convict the accused. "The accused person cannot be convicted for an offence under Section 302 of the IPC only based on the post-mortem report" the Apex court ruled in the case of *Balaji Gunther Dhula v the State of*

¹⁶ *Anant Chintaman Lagu v State of Bombay* (1960) SC 500, 523

¹⁷ *Ibid*

¹⁸ *Goutam Kundu v State of West Bengal* (1993) SCR (3)

¹⁹ *Pantangi Balarama Venkata Ganesh v State of Andhra Pradesh* (2009) SC 3126

²⁰ Batuklal (n 8)

*Maharashtra*²¹. It is a well-established notion that the post-mortem doctor's testimony should be given more weight than remarks from textbooks, but this does not ipso facto imply that every single assertion stated by a medical witness should be accepted, even if it contradicts itself. The court will always examine such an opinion.

Ballistics Experts: The area of forensic science known as "ballistics" focuses on the examination of projectile motion. A projectile is a body that is launched by force, most commonly from a firearm and particularly through the air. So studying weapons is part of the science of projectiles. Forensic ballistics is the study of weapons, ammo, and explosives to precisely reconstruct a crime scene. Ballistic experts collaborate closely with police investigators, attorneys, and judges to whom they ultimately testify as independent expert witnesses.²²

In *S.G. Gundegowda v State*²³, the ballistic expert's report was accepted as evidence without his standing as a witness. According to the ruling in *Rchhpal Singh v State of Punjab*²⁴, "the view of ballistic specialists plays a significant role in cases where injuries are caused by firearms, and failing to present the expert opinion before the trial court affects the credit worthiness."

Fingerprint expert: The evidence of a fingerprint is acceptable, but just like in other situations, the expert providing the opinion must be qualified and provide a good argument for it.²⁵ In *Mahmood v State of Uttar Pradesh*²⁶, the Supreme Court stated, "we did not find it convenient to depend upon his opinion, even though it was expected to be legally valid under section 45 (identification of fingerprints), because an expert had not provided any reasons for the backing of his opinion, nor was it shown that he possessed special skill, expertise, and experience in the science of fingerprint identification."

²¹ *Balaji Gunther Dhula v State of Maharashtra* (2012) 11 SCC 685

²² Bhagwan R. Gawali & Dr. Dipa Dube, 'Expert Evidence: Rule Of Admissibility In India With Special Reference To Ballistics' (2012) 2(10) International Journal of Research in Computer Application and Management <<https://ssrn.com/abstract=1651148>> accessed 15 November 2022

²³ *S.G. Gundegowda v State* (1996) CrLJ 852

²⁴ *Rchhpal Singh v State of Punjab* (2000) SC 2710

²⁵ Sarvesh Kumar Shahi & Sidhartha Sekhar Dash (n 6)

²⁶ *Mahmood v State of Uttar Pradesh* (1976) SC 69

Opinion of doctor as to age: A doctor's opinion is a crucial piece of evidence. The result of the medical testimony is that it makes the other age-related information more credible. When an opinion is solely focused on appearance, it is useless.²⁷ Ossification tests or asphyxia between bones are typically used to determine age, however, they do not provide absolute confirmation.²⁸ In *Premchand v State of Himachal Pradesh*²⁹, it was ruled that an "ossification test to determine the age of a person is not a conclusive test." Age determination varies depending on which bodily area is accessible for inspection.³⁰

Typewriter Evidence: The Hon'ble Supreme Court ruled in *CBI New Delhi v S.J. Choudhary*³¹ that the definition of "science" is broad enough to allow for the admissibility of a typewriter expert's testimony as evidence under Section 45 of the Evidence Act. The Court relied on the typewriter's expert opinion, which it deemed relevant and admissible, to make its decision.³²

Polygraph, Brain-Mapping, and Lie Detection: In general, the Courts have the right to deny the admission of polygraph test results as evidence. In *Selvi v the State of Karnataka*³³, the Supreme Court of India ruled that it explicitly invoked the right to privacy to declare these tools unlawful. According to the court, these methods violated the accused's psychological privacy, which was a crucial component of their right to personal liberty. After carefully considering the matter, the Supreme Court ruled that no person should ever be deliberately exposed to any of the aforementioned procedures, whether as part of a probe for a criminal case or anything else. That would be an unjustified violation of someone's freedom.³⁴

Handwriting expert: In court procedures, the authentic execution of a document must be proven since disputes over the identity of handwriting sometimes arise because the execution of a document is either rejected or the signer's signature is said to be faked. The following factors are

²⁷ Batuklal (n 8)

²⁸ Dr. Aditya Tomer, 'Medico-Legal Evidence in Indian Law: Appreciation, Evaluation & Impact' <<https://www.amity.edu/UserFiles/Journal/6.pdf>> accessed 15 November 2022

²⁹ *Premchand v State of Himachal Pradesh* (2000) CrLJ 951 HP

³⁰ Dr. Aditya Tomer (n 28)

³¹ *CBI New Delhi v S.J. Choudhary* (1996) SC 1491

³² Batuklal (n 8)

³³ *Selvi v State of Karnataka* (2010) 7 SCC 263

³⁴ Himanshu Setia (n 11)

taken into account by handwriting experts when forming an opinion about the identity of a handwritten signature: (a) hand movement (b) writing ability (c) ties between letters (d) tint of the letters (e) ornamentation used (f) terminals of specific words (g) thickness of the letters (h) space between letters (i) writing speed (j) pen-hold (k) pen-pressure. The professionals might share their comments by witnessing the aforementioned techniques.³⁵

In *Ram Narain v State of Uttar Pradesh*³⁶, it was decided that the conclusion reached could not be challenged on special leave merely because handwriting comparison is typically regarded as risky and inconclusive. This was because the court itself had compared the disputed and admitted writings and determined that it was safe to accept the expert's opinion. It should be remembered that expert testimony is not necessarily definitive or conclusive. The expert's opinion may not be relied upon unless the court is satisfied. In the case of *Alamgir v State (N.C.T. Delhi)*³⁷, it was decided that a handwriting expert's opinion does not constitute proof of guilt, but that it can be trusted when backed up by additional pieces of both external and internal evidence.

A witness with knowledge of the writing style of the person who is alleged to have written a certain document may provide testimony to support the authorship of handwriting under Section 47.³⁸ However, the witness must establish that he is familiar with the relevant author's writing for such testimony to be admissible. The opinion evidence is hearsay, and only after the witness has mentioned how well he knows the person in question's handwriting does the evidence under section 47 start to make sense.³⁹ The main purpose of Section 47 is to apply in situations where disputed signatures are used on writings that were not created in the presence of the persons presenting evidence. These individuals are capable of identifying the disputed

³⁵ Gorantla Swathi, 'Reference Of Documents To Experts For Opinion' (*District Court of India*) <<https://districts.ecourts.gov.in/sites/default/files/jcrajamworkshop.pdf>> accessed 15 November 2022

³⁶ *Ram Narain v State of Uttar Pradesh* (1973) SC 2200

³⁷ *Alamgir v State (N.C.T. Delhi)* (2003) SC 282

³⁸ *Fakiruddin v State of Madhya Pradesh* (1967) SC 1326

³⁹ *Mubarak Ali Ahmad v State of Bombay* (1957) SC 857

signature due to their familiarity and understanding of the writer's style of writing even though they were not present when the writing was created.⁴⁰

Corroboration of dying declaration by medical evidence: A doctor's injury report or post-mortem report is not admissible in court as substantive evidence unless the doctor has been physically inspected. However, the injury report or the post-mortem is admissible and pertinent evidence if the doctor is deceased or unavailable for examination in court, as described in Section 32 of the Evidence Act. Another doctor or a compounder may be able to prove it.

Electronic Evidence and Electronic Signature: The opinion of the Examiner of Electronic Evidence referred to in section 79A of the Information Technology Act, 2000 is a relevant fact when in a proceeding the court must form a decision on any query related to any transmitted data or preserved in any computer system or network or any other digital or electronic form.⁴¹ The Certified Authority's opinion, which issued the electronic signature certificate, is a relevant fact when the court must develop an opinion regarding the electronic signature of any individual.⁴²

General Custom: The opinions of those who are aware of the presence of such a common custom or right are important where there is a doubt regarding the existence of any general custom or right and on which the court must develop an opinion. This section discusses general customs and general attitudes toward people. The significance of his testimony would logically depend on the witness's status and personality. Only a live person, who would have been aware of the existence of any prevailing custom or right, may express an opinion under Section 48, and he must personally appear before the court. Where a specific person's claimed unique right is in issue, Section 48 does not apply.⁴³ *Brijlal v V. M. Chandra Prabha*⁴⁴, it was stated that "it is clear that only the persons who are likely to know about the customer in question are contemplated

⁴⁰ *Girija Prasad v Sardar Labh Singh* (1977) Patna 241

⁴¹ Indian Evidence Act 1872, s 46

⁴² Indian Evidence Act 1872, s 47A

⁴³ Indian Evidence Act 1872, s 48

⁴⁴ *Brijlal v V. M. Chandra Prabha* (1971) Gujarat 188

by this Section. It is necessary for the person that he should have personal knowledge about the facts to be proved. But it must prove that his opinion is based on some information.”

Usages and tenets: The opinions of those with special knowledge on the subject are relevant facts when the court must form an opinion regarding a group of people's or family's usages and beliefs, the structure and administration of a religious or charitable foundation, or the definition of words or terms used in specific locales or by specific demographic groups.⁴⁵

Relationship: The conduct of any individual who has specific information about the subject of the relationship and has voiced an opinion about its existence, if any, is a relevant fact when the court must form an opinion about the relationship between one person and another. A witness must attest to the conduct if it refers to something that can be seen, and a person who was injured must authorise it if it related to something that can be heard.⁴⁶ The view must be from a family member or someone who, though not a family member, has unique access to information about the parties' relationship and can discuss what he has been informed and what he has learned about it as long as what he says is his independent opinion.⁴⁷ The section makes an exemption in the proviso part. It stipulates that in instances governed by sections 494, 495, 497, and 498 of the IPC and a procedure under the Divorce Act, matrimonial proof cannot be provided by an expert's view. In these situations, the rigorous marital proof is required. In this situation, witnesses must be provided in the presence of the whom the wedding was celebrated.⁴⁸

EVIDENTIARY VALUE OF THE EXPERT OPINION

It must be demonstrated that the witness has undertaken specialised research into the matter or has had relevant legal experience, or, in other words, that he is knowledgeable and skilled enough to provide reliable testimony. If the evidence is merely advisory in nature, the expert is not a witness of fact. It is the responsibility of an expert witness to provide the judge with the appropriate scientific standards for evaluating the veracity of circumstances, allowing the judge

⁴⁵ Indian Evidence Act 1872, s 49

⁴⁶ *Dalgovind v Nimai Charan* (1959) SC 914

⁴⁷ *Bal Ram v Jayakrishna* (1972) Ori. 10

⁴⁸ Indian Evidence Act 1872, s 50

to make an independent decision by applying the standards to the facts supported by the case's evidence.⁴⁹

Depending on a variety of factors, the judiciary has interpreted the evidential value of expert testimony. In the landmark case of the *State of Maharashtra v Damu Gopinath Shinde*⁵⁰, it was decided by the Apex Court that “no reliance may be made upon the expert’s opinion unless the expert is examined in the court. The evidence of the expert like any other witness has to be seen to extract the grain from the chaff, i.e. to take the relevant part and discard the opinion which is without any basis.” It was ruled in the case of *State v Madhukar*⁵¹ that “it is important to note that the opinion of an expert is not accepted just because he says so. He has to satisfy the court about his expertise on the particular fact in question”. According to the ruling in *State of Maharashtra v Domus Gopinath Shinde and others*⁵², “mere assertion without mentioning the data or basis in support of his opinion is not evidence, even if it comes from an expert. It is held that such evidence, though admissible, may be excluded from consideration as affording no assistance in arriving at the correct value without examining the expert as a witness in court”. It was ruled in *State v Kanhu Charan Barik*⁵³ “The evidence of experts after all is opinion evidence. The opinion is to be supported by reasons. The court has to evaluate the same as any other evidence. The reasons in support of the opinion. If convincing, make the opinion acceptable. It was decided that expert opinion is just opinion evidence in the case of *Forest Ranger Officer v P. Mohammad Ali*⁵⁴. The court is not involved in its interpretation. Because expert opinion is not always enforceable in court, the actual opinion of an expert cannot trump the affirmative testimony of the attesting witness. In the case of conflicting opinion between medical evidence and direct evidence the court ruled in *Prem v Daula*⁵⁵, “if there is confliction between medical evidence and direct evidence given by eyewitnesses then direct evidence given by eyewitnesses must be preferred if its testimony is undoubted and not the opinion evidence of the medical expert.” In

⁴⁹ Batuklal (n 8)

⁵⁰ *State of Maharashtra v Damu Gopinath Shinde* (2000) SC 1691

⁵¹ *State v Madhukar* (1967) CrLJ 167

⁵² *State of Maharashtra v Domus Gopinath Shinde & Ors* (2000) SC 1691

⁵³ *State v Kanhu Charan Barik* (1983) CrLJ 133

⁵⁴ *Forest Ranger Officer v P. Mohammad Ali* (1994) SC 120

⁵⁵ *Prem v Daula* (1997) SC 719

*Punjab Singh v State of Haryana*⁵⁶, it was tested that, “where the direct evidence about the assault by a particular person is satisfactory and reliable medical evidence cannot override that because the latter is hypothetical.”

CONCLUSION

After the entire discussion, we can say that expert opinion is very significant in the area of criminal justice, but it is more corroborative than conclusive. The Court may only request an expert's opinion when it believes that a matter has arisen that cannot be resolved without the assistance of an expert. A person must possess the necessary training, experience, or practice in their profession to pass for an expert. India's law on expert opinion is not all-inclusive. Because of this, the expert's opinion is viewed as having minimal support. Only expertise and experience have been given precedence. Finally, the decision to consider the expert's opinion rests with the court, which handles the case.

⁵⁶ *Punjab Singh v State of Haryana* (1984) SC 1233