



# Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2023 – ISSN 2582-7820  
Editor-in-Chief – Prof. (Dr.) Rishikesh Dave; Publisher – Ayush Pandey

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

---

## Evidentiary value of Forensic Accounting, Auditing, and Investigation in Financial Crimes

Divishyaa T<sup>a</sup>

<sup>a</sup>Symbiosis International University, Pune, India

*Received* 10 January 2023; *Accepted* 25 January 2023; *Published* 30 January 2023

---

*This paper discusses the conflict that prevails in the law of evidence concerning the expert witness. Section 45<sup>1</sup> to Section 51<sup>2</sup> of the Indian Evidence Act mentions the provision related to third-party witnesses, which are now referred to as an expert witness. The paper is an attempt at a qualitative approach to support the reader's conclusive analysis. The paper discusses the admissibility of forensic accounting evidence in courts and addresses the lacunae in the expert opinion infrastructure between criminal and commercial cases. The paper also examines the previous judicial pronouncements to project the weightage of an expert witness under Indian Law. This paper examines how forensic accounting can be used to collect evidence for use in court cases involving financial crimes. The problems with forensic accounting are discussed. Recommendations based on the incorporation and inclusion of expert witnesses in the matter of financial crimes in the Indian Context are discussed.*

**Keywords:** *section 45, expert opinion, admissibility, forensic accounting, forensic auditing, forensic investigations.*

---

---

<sup>1</sup> Indian Evidence Act 1872, s 45

<sup>2</sup> Indian Evidence Act 1872, s 51

## INTRODUCTION

The imminent growth and diversification in businesses have led to an increase in white-collar crimes. Such growth in crimes creates the necessity for forensic auditing and investigations in case of detecting discrepancies. Expert financial advice is frequently required by advocates and their clients since it is vital to the result of the litigation. Financial forensics, often known as forensic accounting, provides them with this evidence. A forensic audit is a review and analysis of a company's or individual's financial records to obtain information that can be used as evidence in court. Forensic audits require expertise in the legal framework of forensic audits as well as competence with accounting and auditing procedures. An extensive range of investigative procedures is covered by forensic audits. A party who is accused of fraud, embezzlement, or other financial crimes may be subject to a forensic audit.<sup>3</sup> The auditor could be requested to participate in a forensic audit to testify as an expert witness in court. In addition to cases involving financial crime, forensic audits may also cover conflicts involving bankruptcy filings, company closures, and divorces.

We have observed a growth in private professional services assisting businesses and their management in dealing with white-collar crimes as the complexity of such crimes has increased over the years and investigations have become more skilled. The legal actions may range from offences under legislations such as the Indian Penal Code (such as fraud, cheating, forgery, etc), PMLA, Prevention of Corruption, Insider Trading, etc.

## EXPERT OPINION ACCORDING TO INDIAN EVIDENCE LAW

According to Section 45<sup>4</sup> of the Indian Evidence Act, an "Expert" is defined as a person who possesses specialised knowledge, skill, or experience in any of the following, International law, Science, art, handwritten note or, fingerprint identification.<sup>5</sup> He has acquired this understanding either by practice, observation, or appropriate studies. For instance, a medical officer, a chemical

---

<sup>3</sup> Kumar S & Venkataraman R, 'An Empirical Study on Forensic Accounting for Corporate Fraud Management' [2019] Adalya

<sup>4</sup> Indian Evidence Act 1872, s 45

<sup>5</sup> Schmidt C W H & Rademeyer H, *Law of evidence* (Lexis Nexis 2000)

analyser, an expert in explosives, a ballistics specialist, an expert in fingerprints, etc. The parties are mostly unaware that it is their responsibility to present expert evidence after obtaining the court's permission. Most individuals believe that it is the court's responsibility to call an expert witness. As a result, this right is not used. Despite having the option to do so, the court is not required to consult any expert.

## EXPERT'S DUTIES

- An expert is not a fact-based witness.
- His evidence has a consultative quality.
- An expert testifies but doesn't make a decision.
- The judge must get the relevant scientific criteria from an expert witness for the judge to independently make his decision by applying the criteria to the facts supported by the evidence.

Only when the expert is cross-examined in court is their opinion admissible? An expert's report is not admissible unless the expert justifies the view and his testimony is put to the test through cross-examination by the opposing party. But the law has done away with the examination of some scientific experts to reduce the time and costs associated with obtaining expert assistance.

For instance, **Section 293 of the Criminal Procedure Code**<sup>6</sup> lists Government Scientific Experts which does not include a forensic accounting expert. Any of the government scientific experts' reports mentioned in the code are admissible as evidence in any investigation, trial, or other action, and the court may summon and question any of these experts if it sees proper. However, he may not be required to personally present in court for witness examination unless the judge specifically orders him to do so. Any responsible officer who is working with him is familiar with the facts of the matter, and can provide a credible deposition in court on his behalf may be appointed to represent him in person.

---

<sup>6</sup> Code of Criminal Procedure 1973, s 293

## EVIDENTIARY VALUE OF FORENSIC REPORTS THROUGH JUDICIAL PRONOUNCEMENTS

In the case of **Basudeo Gir v State**<sup>7</sup>, to broaden the scope of Section 45's applicability, the hon'ble bench stated that, the terms "science" and "art," as well as the advice of accountants and other professionals, have been given a broad interpretation. In the case of **Forest Range Officer v P. Mohammad Ali**<sup>8</sup>, the court observed that The testimony of an expert witness is not non-binding in the court and will not supersede the testimony of an eyewitness.

Also, in the case of **Murari Lal v State of M.P.**,<sup>9</sup> it was held that such expert evidence must generally be corroborated; it is not a requirement of the law that all expert opinions be substantiated for the court to accept them. Additionally, in the case of **Chennadi Jalapathi Reddy v Baddam Pratapa Reddy**<sup>10</sup>, it has been ruled that expert testimony is not considered decisive evidence; therefore a court cannot base its decision only on it.

In practice, the High Court of Andhra Pradesh ruled in **Virothi Tirupathi Rao v Kota Venu**<sup>11</sup>, that if a party directly acquired an expert opinion from a private expert, that private expert's conclusions would not be admitted as evidence under Section 45. The Court's decision was primarily supported by the fact that the party requesting the opinion did not utilise their right to petition the Court for an official expert appointment and instead chose to do it privately.

Companies that hire private professionals to seek admissibility of forensic evidence have the privilege of **section 126**<sup>12</sup> of attorney-client confidentiality. A corporation's internal investigation shall be protected under Section 126 if legal counsel has been retained by the company for that purpose. This protection also extends after the legal counsel's contract has ended and applies to any documents, reports, etc. that may have been written by them. The Bombay High Court noted

---

<sup>7</sup> *Basudeo Gir v State* AIR 1959 Pat 534

<sup>8</sup> *Forest Range Officer v P Mohammad Ali* [1993] SCR (3) 497

<sup>9</sup> *Murari Lal v State of MP* (1980) 1 SCC 704

<sup>10</sup> *Chennadi Jalapathi Reddy v Baddam Pratapa Reddy* (2019) 14 SCC 220

<sup>11</sup> *Virothi Tirupathi Rao v Kota Venu* (2016) 4 ALT 478

<sup>12</sup> Indian Evidence Act 1872, s 126

in a 2003 decision<sup>13</sup> that Section 126 protects papers prepared in advance of litigation "to seek legal advice and for use in the expected action."

### **ANALYTICAL STUDY ON EXPERT WITNESS CREDIBILITY**

The two areas of knowledge that forensic accountants can offer are consulting and testifying, according to **Matson (1999)**<sup>14</sup>. While the testifying expert's job is to deliver an opinion based on facts, the consulting expert's function is to provide the facts and context. For the court to easily analyse and comprehend the evidence and reach a decision, the forensic accountant might also testify.

A forensic accountant is referred to as an expert witness in court when called upon to offer testimony about findings as well as an opinion. It should be emphasised that the difference between an ordinary witness and an expert witness is that an expert witness is allowed to give the court an opinion, while a regular witness is not. The court will ultimately decide whether or not the expert witness' testimony is credible.<sup>15</sup> The expert's advice must also be rejected if it is based on a hypothetical scenario that is wholly inconsistent with the actual circumstances.

In some circumstances, the court may still find the expert's testimony admissible after reviewing and weighing it, but it may not rely on it. If the courts can considerable help from the witness, the expert's point of view will be admitted. This suggests that the court did not find the facts upon which such an opinion was founded to be inadmissible and did not question the reliability of the expert, but that the court could not simply rely on it.

Whether the expert's experience and knowledge make him better qualified than the court to render an opinion in his field of specialty is one of the factors to be taken into account when evaluating an expert opinion. The advocate must present the necessary background through questions in court when an expert witness's expertise is contested. The judge will then use his discretion to qualify the witness and determine if they are an expert overall or only on certain

---

<sup>13</sup> *Larsen & Toubro Limited v Prime Displays (P) Ltd Abiz Business (P) Ltd & Anr* [2003] 105(1) BomLR 189

<sup>14</sup> Matson J V, *Effective expert witnessing* (3rd edition CRC Press 1999)

<sup>15</sup> Krishna Kumari Areti & Areti Krishna Kumari, 'Evidentiary Value of Expert Opinion Under Indian Evidence Act' [2007] SSRN

topics. Therefore, it follows that the expert's evidence as a witness will only be admitted in a legal proceeding as an expert due to their field of expertise and when they are better qualified than the court to conclude a particular situation.<sup>16</sup> The expert's evidence as a witness will be invalidated if any of these requirements are not met.

## CRITICAL ANALYSIS

The Indian Evidence Law or the Criminal Procedure Code for that matter, does not emphasize the evidentiary value of forensic accounting or reporting concerning financial crimes, compared to the importance given to the evidence, reports, and opinions of experts in criminal matters. India is essentially growing in the niche of forensic auditing and forensic investigation in criminal matters. For instance, the chemical experts approved by the Criminal Procedure Code. It is just a matter of time before setting up such an infrastructure for facilitating forensic audits under the government, which will give more ambit to the admissibility of such forensic reports to have ease in judicial proceedings and the prosecution to build a case on such crimes. The other problems in the admissibility of such evidence are the private and internal investigations done by the companies or outsourcing such services doesn't build up their credibility in front of the courts.

Though, the 185<sup>th</sup> Law commission report<sup>17</sup> recommended a broader meaning of "Expert Opinion" as recommended in the 69<sup>th</sup> Report<sup>18</sup>. The report has completely welcomed such proposals in its recommendation and has highlighted the importance of the report's competence in foreign law. Additionally, knowledge of other diverse professions, including writing, trading, and inventory, was also covered. The ambit in the Indian Evidence law to cover the professional opinions of such forensic auditors is very sleek, and there are no specific provisions dealing with such professions of Forensic Auditors.

---

<sup>16</sup> Varaidzo Denhere, 'Financial Forensic Evidence and Acceptability in the Court of Law' (2022) 3 UJSA

<sup>17</sup> Law Commission of India, 'Reforms in the Judiciary: Some Suggestions, Report No.185' (Law com No 185, 2003)

<sup>18</sup> Law Commission of India, 'Reforms in the Judiciary: Some Suggestions, Report No.69' (Law com No 69, 1977)

Speaking in terms of private forensic accounting services availed by the companies under threat and their lawyers, it's just like hiring a private detective, to just anticipate what are the charges ahead of them if there are discrepancies within the company. The admissibility of such independently gathered evidence before a court or other legal body is frequently questioned, despite thoughts diligence reports are frequently crucial in understanding the facts and liability of a firm and its officers/employees. Such forensic reports might be allowed in as professional testimony but not without sufficient corroboration since such evidence are misstatements prone.

There are various other shortcomings in terms of private internal investigations; the private investigator could have access to sensitive personal data or information about individuals (SPDI), such as financial or health records. Information Technology Act, 2000<sup>19</sup> (IT Act) and Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011<sup>20</sup> protect this data at the moment. The processes necessary to protect such SPDI and the sanctions for their unauthorised use are outlined in the IT Act and IT Rules.

## CONCLUSION AND SUGGESTIONS

To conclude, it could be argued that expert opinion is not a substantial piece of evidence. The courts do not view it as conclusive. It might not be worthy evidence without impartial and trustworthy corroboration. When a court adopts an expert's opinion, it no longer belongs to the expert; it then becomes the court's opinion. Though the evidence given by the forensic expert, regarding the private investigation is usually examined under section 45 of the Evidence Act, it is generally admissible in Court. The reliance on such reports during formal legal proceedings is only rising since it provides structure and focus during the proceeding. However, there are several issues and difficulties with expert testimony being admitted. There have been numerous instances of misuse of expert testimony, where the question of who is eligible to be an expert

---

<sup>19</sup> Information Technology Act 2000

<sup>20</sup> Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules 2011

arises, the provision is not comprehensive enough to include strict eligibility criteria so that, expert opinion on empirical data can be given predominance over eye-witnesses.

There is no test of partiality in the expert's opinion discussed. This is mostly due to the legal gap and ambiguity around the term "expert." Currently, the Indian framework only has provisions that encourage reporting of frauds and discrepancies by financial auditors. But Forensic Auditors work beyond the number to investigate misstatements. No provision defines Forensic Auditors in the Evidence Act. Only the whistle-blower clause works in favour of financial auditors, which doesn't provide enough encouragement for them to initiate forensic auditing. It is high time there should be the government's role in recruiting forensic experts for investigating financial crimes to give predominance to the scientific conclusion over exaggerated facts.