

EXPERT EVIDENCE

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Abstract

The law of evidence is very crucial branch of law on which justice rests. The main object of evidence is to pave way for court to come to a conclusion regarding the present case. In certain cases where evidence is beyond the knowledge and skill of court, evidence create problem for court to come to any conclusion. In such situation court takes the help of expert evidence. Expert is a person who has high knowledge and skill in particular field. Evidence is information given by a person that proves the allegation to be true or false. So expert evidence is information or statement made by a person who is specialized in that particular field of work or which he has given that information. Expert evidence is required to assist the court when the case before it involves matters on which court does not have the requisite technical or specialist knowledge. Expert evidence is corroborative and advisory in nature. It is not binding in all the cases. Opinion on evidence given by witness is not compulsorily binding to court. It wholly depends on the situational circumstances whether the expert evidence and opinion given by expert witness is relevant or not and what is its evidentiary value. Expert witnesses are appointed by court in only those cases where court lacks in knowledge about the case and if court feels it necessary for the interest of justice. There are requisite rules to be followed by experts in giving their expert report to the court and the court may call upon the expert for testimony. Court does not rely on this corroborative evidence but on primary evidences-documents itself produced for the inspection of the court. Expert evidence is given in both civil cases as well as in criminal cases. The present case tries to analyze the evidentiary value of expert evidence, what is relevant and not relevant evidence, cases to consider or discard of expert evidence, binding nature of expert evidence and possible changes which can be brought in the field of expert evidence for the betterment of the ends of justices.

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Introduction

People often say that this person is an expert in a particular field or work. People say this person is an expert speaker or that person is an expert in particular field. In law, there may occur a case concerning issues related to science or any other faculties other than law. In such a case judge's knowledge or skill may not amount sufficient to give any opinion of his own or judge any related evidence and give his judgment. An expert is called in such cases who deliver his opinion, facts or evidence related to such field in which he has extra-ordinary knowledge and skill. Sections 45 – 55 of Indian Evidence Act, 1872 talk about expert, expert evidence and expert opinion.

Who's an expert?

An expert is a person with high knowledge and skill in a particular field of study, a person who has earned specialized knowledge and skill in that particular field of study. Evidence is information or opinion given by any person that proves the allegation to be true or not to be true. So expert evidence is information or opinion given by an expert in any field that person is specialized in, which comes out to be evidence in any matter. In field of law, expert witness is a person whose opinion is accepted by judge relating to any fact or evidence. An expert witness giving an opinion should be only on those matters in which that witness has specialized skills. This opinion given by expert witness is called expert opinion and if any evidence delivered by expert is called expert evidence. Expert evidence is applied to both civil cases and criminal cases. According to Section 45 of The Indian Evidence Act, 1872 “When the Court has to form an opinion upon a point of foreign law or of science or art, or as to identity of handwriting [or finger impressions]¹, the opinions upon that point of persons specially skilled in such foreign law, science or art, [or in questions as to identification of handwriting]², [or finger print analysis]³ are relevant facts. Such persons are called experts”⁴.

¹ Inserted by Act 5 of 1899, S. 3. For discussion in Council as to whether “finger impressions” include “thumb impressions,” GAZETTE OF INDIA, 1898, Pt. VI, p.24.

² Inserted by Act 18 of 1872, §.4.

³ *Supra* note 1.

⁴ The Indian Evidence Act, 1872, No. 1 of 1872, §.45.

Types of legal evidence

- Testimony evidence – The word testimony has been derived from Latin word *testis* referred to disinterested third party witness. In law, testimony is one of the forms of evidence which is obtained when the witness makes any statement or declares any fact. Testimony may be in any form, written or oral. When written testimony is witnessed by one or more persons who swear or affirm its authenticity that testimony is admissible in court and is of more reliability and validity. Whenever court asks questions to witness, the answers given by witness to the court is called testimony. It is a serious crime if witness gives false information because before giving any statement witness sworn under oath. After this if witness gives false answers, witness commit the crime of perjury. According to section 118 of Indian Evidence Act, 1872 any person may be called to testify unless that person is prevented from understanding the question of the court due to old age, any disease and disease can be of body or mind, or insanity of any person or any other cause of the same kind. Person called to testify by court if refuses to answer a question asked by court can be sent to jail for short duration of period on ground find in contempt of court.
- Documentary evidence – Documentary is another form of evidence. This is different from oral testimony. Documentary evidence is in written form. It is any document which is or can be introduced at a trial. Documentary evidence may be an invoice, a contract, a will, a photograph, a tape recording or film or an email, spreadsheets, etc. for documentary evidence to be admissible in court the witness must prove by other evidence that it is genuine. Documents can be primary evidence or secondary evidence. Primary evidence is the original documents produced in the court whereas secondary evidence is the copies of the documents of the primary evidence.

Example: When the handwriting on document needs to be identified then forensic experts match the handwriting on document with the sample handwriting of certain person and give their opinion as to the handwriting of both the documents.

- Physical evidence – Physical evidence is also called real evidence or material evidence. Any material object in the

matter which gives rise to the litigation, given as evidence in any trial to prove a fact in issue based on object's physical characteristics is called physical evidence.

Explanation: Experts working or investigating in forensic labs do study on material objects. When these experts give their opinion about any fact relevant to case in court, court may admit or deny the expert's opinion. Whenever a doubt is created or an expert is required with his physical presence, the expert is called for its testimony in the court of law.

An expert starts studying a legal court case only after an expert has been appointed by the court if it feels any necessity of expert evidence. An expert witness when gives the expert evidence has to be a written report. The report must further be given according to the rules provided in provisions of the Act. Unless the interest of justice requires an expert to be present in court, the court will not ask expert to attend the trial.

Evidentiary value, consideration, binding force

- **Opinion of medical experts**

Medical evidence is only an evidence of opinion. It is only to settle the matter and not so important. In case of *Nilabati Behra v. State*⁵ that the opinion of a doctor is reliable if he held the post-mortem examination and of Forensic Science Laboratory. If any other expert doctor gave any contrary opinion who gave cryptic report and based on its conjectures should not be relied upon. In the case of *Madan Gopal v. Naval Dubey*⁶ it was held that the medical opinion is just an opinion and is not binding to the court. Opinion on technical aspects and material data given by the medical experts is only considered by court as advice and the court has to form its own opinion.

- **Conflicting opinion of two doctors**

In case of *T.P. Divetia v. State*⁷ it was held that if there is any confliction between the opinion of two doctors then the expert opinion by the doctor who actually examined the injury and

⁵ Nilabati Behra v. State, AIR 1993 SC 1960: (1993) 2 SCC 746: 1993 Cr LJ 2899.

⁶ Madan Gopal v. Naval Dubey (1992) 3 SCC 204.

⁷ T.P. Divetia v. State, AIR 1997 SC 2193: 1997 Cr LJ 2535.

held the post-mortem must be considered and not of that doctor who gave an opinion only on the basis of X-Ray report, injury report or post-mortem report etc.

- **Conflicting opinion between medical evidence and direct evidence**

In case of *Prem v. Daula*⁸ it was held that if there is confliction between medical evidence and direct evidence given by eye witnesses then direct evidence given by eye witnesses must be preferred if its testimony is undoubted and not the opinion evidence of the medical expert.

- **Corroboration of dying declaration by medical evidence**

In the case of *State of U.P. v. Ram Sewak*⁹ it was held that it is rare that description of incident and injury described in the dying declaration gets full corroboration from the medical evidenced contained in the injury report or the post-mortem report.

- **Certificate of doctor on plain piece of paper if to be rejected**

In case of *Ammini v. State*¹⁰ it was held that if the certificate of doctor is given on a plain piece of paper and not on prescribed form regarding the injury caused to accused person, it cannot be rejected merely because it is on plain piece of paper and not on prescribed form.

- **Medical evidence as to age**

In case of *S.K. Belal v. State*¹¹ it was held that if medical evidence shows her age between 17 to 18 years but on the other side documentary evidence shows her age about 18 years, a victim girl cannot be proved minor. But in case of *Jagtar Singh v. State*¹² it was held that if birth certificate is not reliable, the opinion of doctor should be relied upon regarding the age of victim.

⁸ Prem v. Daula, AIR 1997 SC 719: (1997) 9 SCC 754: 1997 SCC (Cri) 754: 1997 Cr LJ 838.

⁹ State of U.P. v. Ram Sewak (2003) 2 SCC 161.

¹⁰ Ammini v. State, AIR 1998 SC 260: 1998 Cr LJ 481.

¹¹ S.K. Belal v. State, 1994 Cr LJ 467 (Ori).

¹² Jagtar Singh v. State, AIR 1993 SC 2448: 1993 Cr LJ 2886.

- **Evidence of DNA expert**

In case of *Pantangi Balarama Venkata Ganesh v. State of A.P.*¹³ it was held that “the evidence of DNA Expert is admissible in evidence as it is a perfect science”.

- **Opinion of ballistic expert**

In the case of *S.S. Ajmer Singh v. State of Punjab*¹⁴ it was held that if there is no ground not to believe the opinion of ballistic expert, then the opinion of ballistic expert is reliable. Only because there was delay in sending the pistol for obtaining expert opinion as to whether it was in working condition, does not make it unreliable when there is clear evidence of the seizure of the weapon and there was no suggestion that the pistol has been substituted. In case of *Gundegowda v. State*¹⁵ it was held that ballistic expert report was admissible without calling ballistic expert as witness. In case of *Rchhpal Singh v. State of Punjab*¹⁶ it was held that the opinion of ballistic expert is very importance in cases where injury is caused by fire arms. In case of failure to produce such opinion report effects the credit worthiness.

- **Police officer when can be treated as ballistic expert**

In case of *Brij Pal v. State*¹⁷ it was held that police personnel must be treated as ballistic expert if he is having certificate of technical competency and armour technical course and also having long experience of inspection, examination, and testing of fire arms and ammunition.

- **Finger-print expert**

In case of *Keshavlal v. State of M.P.*¹⁸ it was held that before the seizure of the weapon of offence, if many people have handled it then there will be no effect of non-examination of the finger-print expert in any way.

¹³ Pantangi Balarama Venkata Ganesh v. State of A.P., 2003 Cr LJ 4508 (AP).
¹⁴ S.S. Ajmer Singh v. State of Punjab, 1993 SCC (Cri) 1113: (1993) 3 (Supp) SCC 738.
¹⁵ Mirdhe (1996). S.G. Gundegowda v. State Karnataka. Criminal Law Journal, 852.
¹⁶ Hegde S. (2000). Rchhpal Singh v. State of Punjab, AIR SC 2710, AIR (All India Reporter), SC (Supreme Court).
¹⁷ Brij Pal v. State (1996) 2 SCC 676: 1996 SCC (Cri) 392: 1996 Cr LJ 1677.
¹⁸ Keshavlal v. State of M.P., AIR 2002 SC 1221: (2002) 3 SCC 254: 2002 SCC (Cri) 641.

- **Handwriting expert**

In case of *Alamgir v. State (N.C.T. Delhi)*¹⁹ it was held that opinion of handwriting expert do not amount to conviction but admittedly it can be relied upon when supported by other items of internal and external evidence. In the case of *Devi Prasad v. State*²⁰, it was held that evidence given by a person who has insufficient familiarity should be discarded. Indian Evidence Act insists that documents either be proved by primary evidence or by secondary evidence.

- **Scientific expert**

The scientific evidence given in court must be either based on scientific theory or the hypothesis and such evidence is expected to be empirical and properly documented in accordance with scientific method such as is applicable to the particular field of inquiry. It is a fact that scientific evidence is demonstrative evidence unlike oral testimony, which depends on the deposition of a witness. Scientific methods are used to obtain scientific evidence. Evidence should be relevant and at the same time worthy enough to become admissible in the courts. An expert witness is called to testify about the reliability of the scientific evidence sought to be introduced at trial. In the case of *Pritam Singh v. State of Punjab*²¹ the footprint in blood near the dead body were compared with the footprint of accused dipped in color ink. 9 and 10 similarities were found by the experts in right and left foot respectively of the accused with that blood footprint. Whereas 3 dissimilarities were also found that were explained due to difference in density of blood and ink. It was held that comparison test stood well and footprints in blood were of accused.

- **Opinion expressed in text books**

In case of *State of Madhya Pradesh v. Sanjay Rai*²² it was held that opinions expressed in text books by specialist authors may be of some importance for court in arriving the truth but same cannot be treated as final or conclusive.

¹⁹ Alamgir v. State (N.C.T. Delhi) AIR 2003 SC 282; 2003 Cr LJ 456.

²⁰ Beg M. (1967). *Devi Prasad and Ors. v. State*, on 10 September, 1964. 1967, *Criminal Law Journal*, 64, 134, AIR (All India Reporter).

²¹ Bhagwati (1956). *Pritam Singh v. State of Punjab*, SC 415, CriLJ 805, AIR (All India Reporter), SC (Supreme Court).

²² *State of Madhya Pradesh v. Sanjay Rai*, AIR 2004 SC 2174.

Admissibility of expert evidence

Expert opinion is admissible only when an expert is examined as a witness in a court. Unless the expert gives an appropriate reason for his opinion and being tested during the cross-examination of opponent party, an expert opinion cannot be admissible. Law has stated various provisions for the examination of experts. According to section 293 of CrPC the report of Government scientific experts provided under this section will be held admissible as evidence in inquiry, trial or other proceedings of the court, if the court can summon or examine the experts. If court feels any need to call upon the expert to examine as to subject matter of his report, the court can summon such expert. Further this section states that when court summons such expert and that expert is not able to attend personally, such expert can send his responsible working officer on his behalf who is well versed with the examination done by such expert.

Opinion when relevant/when not relevant

- **Facts bearing upon opinion of expert**

Section 46 of Indian Evidence Act, 1872 states that when an expert makes any opinion about the evidence which is relevant then the facts given by expert are relevant which they supports or are inconsistent with the opinion of expert.

Illustration: If we need to know whether A is intoxicated by a certain poison, the fact that A exhibits any symptoms which experts affirm or deny being the symptoms of that poison, is relevant.

- **Opinion as to handwriting, when relevant**

Section 47 of Indian Evidence Act, 1872 states that “When the Court has to form an opinion as to the person by whom any document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed that it was or was not written or signed by that person, is a relevant fact”²³.

- **Opinion as to electronic signature²⁴, where relevant**

Section 47A of Indian Evidence Act, 1872 states that: “When the Court has to form an opinion as to the [electronic

²³ *Supra* note 4, §. 47.

²⁴ Substituted by Act 10 of 2009, S. 52 for “digital signature” (w.r.e.f. 27-10-2009).

signature]²⁵ of any person, the opinion of the Certifying Authority which has issued the [Electronic Signature Certificate]²⁶ is a relevant fact.”²⁷

- **Opinion as to existence of right or custom, when relevant**

Section 48 of Indian Evidence Act, 1872 states that: “When the Court has to form an opinion as to the existence of any general custom or right, the opinions, as to the existence of such custom or right, of persons who would be likely to know of its existence if it existed, are relevant”.²⁸

- **Opinion as to usages, tenets, etc., when relevant**

Section 49 of Indian Evidence Act, 1872 states that: “When the Court has to form an opinion as to— the usages and tenets of any body of men or family, the constitution and government of any religious or charitable foundation, or the meaning of words or terms used in particular districts or by particular classes of people, the opinions of persons having special means of knowledge can be relevant facts”.²⁹

- **Opinion on relationship, when relevant**

Section 50 of Indian Evidence Act, 1872 states that: “When the Court has to form an opinion as to the relationship of one person to another, the opinion, expressed by conduct, as to the existence of such relationship, or any person who, as a member of the family or otherwise, has special means of knowledge on the subject, is a relevant fact: given that such opinion shall not be sufficient to prove a marriage in proceedings under the Indian Divorce Act, 1869 (4 of 1869) or in prosecutions under section 494, 495, 497 or 498 of the Indian Penal Code (45 of 1860)”.³⁰

- **Grounds of opinion, when relevant**

Section 51 of Indian Evidence Act, 1872 states that: “Whenever the opinion of any living body or living person is

²⁵ Substituted by Act 10 of 2009, S. 52 for “digital signature” (w.r.e.f. 27-10-2009).

²⁶ Substituted by Act 10 of 2009, S. 52 for “digital signature certificate” (w.r.e.f. 27-10-2009).

²⁷ *Supra* note 4, §. 47-A.

²⁸ *Supra* note 4, §. 48.

²⁹ *Supra* note 4, §. 49.

³⁰ *Supra* note 4, §. 50.

relevant, the grounds on which such opinion is based are also relevant. Illustration An expert may give an account of experiments performed by him for the purpose of forming his opinion”.³¹

- **In civil cases character to prove conduct imputed, irrelevant**

Section 52 of Indian Evidence Act, 1872 states that: “In civil cases, the fact that the character of any person concerned is such as to render probable or improbable any conduct imputed to him, is irrelevant, except in so far as such character appears from facts otherwise relevant”.³²

- **In criminal cases, previous good character relevant**

Section 53 of Indian Evidence Act, 1872 states that: “In criminal proceedings, the fact that the person accused is of a good character, is relevant”.³³

- **Evidence of character or previous sexual experience not relevant in certain cases**

Section 53-A of Indian Evidence Act, 1872 states that: “In a prosecution for an offence under section 354, section 354-A, section 354-B, section 354-C, section 354-D, section 276-A, section 376-B, section 376-C, section 376-D, section 376-E of Indian Penal Code (45 of 1860) or for attempt to commit any such offence, where the question of consent is in issue, evidence of the character of the of such person or victim’s previous sexual experience with any person shall not be relevant on the issue of such consent or the quality of consent”^{34,35}

- **Previous bad character not relevant, except in reply**

Section 54 of Indian Evidence Act, 1872 states that: “In criminal proceedings the fact that the accused person has a bad character is irrelevant, unless evidence has been given

³¹ *Supra* note 4, §. 51.

³² *Supra* note 4, §. 52.

³³ *Supra* note 4, §. 53.

³⁴ *Supra* note 4, §. 53-A.

³⁵ Inserted by the Criminal Law (Amendment) Act, 2013 (13 of 2013), §. 25 (w.r.e.f. 3-2-2013).

that he has a good character, in such case it becomes relevant”.³⁶

- **Character as affecting damages**

Section 55 of Indian Evidence Act, 1872 states that: “In civil cases, the fact that the character of any person is such as to affect the amount of damages which he ought to receive is relevant”.³⁷

Literature review

Doris Well wrote an article on ‘testifying in court as a forensic expert stating the role of a forensic expert’. He focused on the procedure followed by the expert starting from the laboratory and ending at the court for the expert testimony.³⁸

Cutler, Findley and Loney researched on the expert testimony on interrogation and false confession, and described about how the experts in particular field can know about the false confessions which also helps the jury. They focused on importance of admissibility of expert testimony as the confession evidence is important and false confessions can disturb the conclusion.³⁹

Clifford worked on the expert witness focusing on the U.S. rules related to them. It stated the worth of expert testimony by discussing the history of various rules or procedures used by U.S. legal system to control the quality of the expert testimony.⁴⁰

Tay studied the role of forensic expert in court and discussed about the working of the forensic experts in laboratories, at crime scene and hoe they can testify in the court depending on their examination.⁴¹

Researcher’s Club studied about the importance of forensic science in law and demanded the establishment of independent forensic science laboratories for early results and experts with

³⁶ *Supra* note 4, §. 54.

³⁷ *Supra* note 4, §. 55.

³⁸ Doris Well, *Testifying in Court as a Forensic Expert*, 269 NIJ JOURNAL, Mar 2012.

³⁹ Brain L. Cutler, Keith A. Findley, Danielle Loney, *Expert Testimony on Interrogation and False Confession*, 82(3) UMKC LAW REVIEW, May 2014.

⁴⁰ W.K. Clifford, *Historical and Practical Considerations Regarding Expert Testimony*, 15 HARVARD LAW REVIEW 54, 40-58, 1901.

⁴¹ Michael Tay, *The Role of Forensic Expert in Court, Conference: Asian Forensic Sciences Network Third Annual Meeting and Symposium*, May 2011.

police officials for proper management of the crime scene in India.⁴²

Cresswell summarized all the roles and duties of an forensic expert. It explains about the procedures of examinations, report making, ethic to be followed and the court testimony if required.⁴³

Swann stated about the roles and duties of the expert witness as how can an expert's opinion change the jury's decision. An expert must show all the examinations and also refer the judge for second opinion.⁴⁴

Clews summarized the importance of expert evidence. It tells about the responsibilities of an expert witness.⁴⁵

Conclusion

Thus, we may conclude that court appoints expert evidence mainly in cases of science and trade where a person with high knowledge is allowed to give his opinion in evidence and facts. They are also called upon to testify to facts and details leading to that opinion. A witness providing expert evidence must be competent to provide evidence in the court case. Any person who is prevented from understanding the nature of question asked by court is competent to give opinion in evidence and facts. As mentioned above that mainly opinion in evidence is taken in field of medicine that is related to death of a person, time of death, age of person dead, kind and nature of weapon used to cause injury, reason of injury and mental state of parties, etc. In case of DNA test, the opinion of person who has specialized skill in that field is taken to determine the legitimacy of a child in family law cases. In the case of *Krishan Chand v. Sita Ram*⁴⁶ it was held that where there is conflict in expert opinion the court has the power to make its own opinion with regard to signature on a document. It completely depends upon the facts and circumstances and opinion of court. There is no provision mention in Indian Evidence Act, 1872 that expert evidence is corroborative in nature. Usually unless expert evidence is supported by other evidence court does not rely on such expert evidence. Because of this reason Supreme

⁴² RESEARCHER'S CLUB, <https://researchersclub.wordpress.com/2014/08/09/importance-of-forensic-science-in-law-a-study-3/>.

⁴³ Cresswell, J, *The Duties of Experts*, IKARIAN REEFER 1993 2 LILR 68, 81-82.

⁴⁴ Alice Swann, *The Roles and Duties of the Expert Witness*, 8 CHILD CARE IN PRACTICE, 305-311, 2002.

⁴⁵ G.D. Clews, *Responsibilities of an Expert Witness*, BARRISTER, 2004.

⁴⁶ Kumar M. (2005). *Krishan Chand v. Sita Ram*, AIR P & H 156, All India Reporter, Punjab & Haryana High Court.

Court of India has observed that it is highly unsafe to convict a person only on the basis of sole testimony of expert. A Jury is not bound to entertain the opinion. Jury may accept or reject the opinion or beliefs of witnesses.

Some of the possible changes according to me that can address the lacunae are:

- In many cases, it's just the expert who gives an independent opinion due to which it is corroborative evidence. There should be more equipment or instruments that can be helpful for more reliable conclusions by an expert.
- More on field experts should be there. Every investigation starts from the crime scene, if not handled or taken care of properly the evidentiary value or things might lose. In India police lack in proper management of the crime scene, so more forensic experts on field should be appointed.
- Every expert makes an opinion on the basis of evidence received in the laboratory and the information provided by the investigating officer. To improve the quality of reports the expert should himself collect the data and evidences instead of relying on the information provided by others.
- An expert when called to the court for testimony, the expert handling the case should himself go for the same. No alternative person can give better explanation than the expert himself who gave the opinion.
- More independent forensic science laboratories should be there so that the cases pending due to the delay in government forensic science laboratories are solved as early as possible.
- Even the already established forensic science laboratories should be well equipped and maintained so that the report formed is more accurate and reliable.

So, it is appropriate to consider the opinion of experts but relying on expert's opinion is a weak form of evidence, mainly in those cases where sufficiency of knowledge is doubtful.

