



Expert Opinion: Relevancy and Admissibility under the Indian Law of Evidence

Sarvesh Kumar Shahi¹, Sidhartha Sekhar Dash²

Assistant Professor, School of Law, KIIT Deemed to be University,
Patia, Bhubaneswar, Odisha, 751024^{1,2}

Abstract—Expert opinion bears considerable importance where the understanding of a subject-discipline requires specialized treatment, training and scientific orientation. Indian Evidence Act, 1872 gives scope for consideration of an expert opinion before the court of law, recognizing his importance in assisting a judge during the dispensation of justice. Scope of Opinion of Expert is fast expanding from foreign laws, medical and other sciences, arts, handwriting, authors, finger impression, ballistic reports, DNA identification, sniffer dog identification, to assisting investigating authority with forensic evidence. Exploring the evidentiary value of expert-opinion through the prism of current and leading judgments of the Supreme Court and High Courts, the authors conclude with the findings that, the definition of an ‘expert’ under the of Act, 1872, is restrictive and narrow, as a person skilled in a field not covered u/s 45 is not treated as an expert. However, the court uses the section in several unmentioned fields like footprints, tracker dogs, ballistic experts, serologists, etc.; and the expert evidence is weak and inconclusive. It is not safe to rely solely upon it without seeking independent and reliable corroboration.

Index Terms— Expert Opinion, Relevancy, Admissibility.

I. INTRODUCTION

The Judge is not expected to be an expert in all fields, especially, where the subject matters involve technical or specialized knowledge or experience to the subject matter. The Indian Law of Evidence allows an opinion of any person other than the judge as to the existence of the facts in issue or facts that are relevant to a matter, which resultantly, presented before the court of law in the form of ‘expert evidence’. The opinion is required both for the civil as well as the criminal side of laws. For the prosecution or plaintiff to prove his case against the defendant or the state to prove a crime against the accused, or the defendant to disprove the case or the accused to cast off the onus of proof, the court considers the opinion of an expert as well if adduced by any of the parties.

II. EXPERT: DEFINITION

According to Black's Law Dictionary - “An expert is a person who possesses peculiar skill and knowledge upon the

the subject matter that he is required to give an opinion upon”. According to Collins Dictionary of Law - “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”. According to Powell - An expert witness is one who has devoted time and study to a special branch of learning and thus is ‘especially skilled’ on those points on which he is asked to state his opinion.

Section 45 of the Indian Evidence Act, 1872 states that an ‘expert’ means a person who has special knowledge, skill or experience either in foreign law, science, art, handwriting, or finger impression and such knowledge has been gathered by him either by practice, observation or proper studies. The definition of an ‘expert’ as envisaged under the Indian Evidence Act, 1872, is somewhat restrictive and narrow. Section 45 of the Indian Evidence Act, 1872, specifically provides that when the court has to form an opinion upon a point of foreign law or science or art and as to the identification of handwriting or finger impressions, the opinion of persons specially skilled upon that point of foreign law or science or art or handwriting or finger- impressions, are relevant.

Thus, on the plain meaning of the section, a person skilled in a field not covered under section 45 of the Act is not treated as an expert to give an expert opinion. Further, the term “especially skilled” is not so helpful, because neither any academic qualification for being an expert has been laid down nor any definite period of practical experience has been mentioned in the Act. If we refer the judicial precedents, the definition given by the courts in various cases illuminates the better the meaning of an expert. In case of Punjab Singh v. State, it was opined that “an ‘expert’ is one who is skilled in any particular art, trade or profession being possessed of peculiar knowledge concerning the same” [1]. In Balkrishna



Das Agarwal v. Smt. Radha Devi and others Hon'ble Justices N.N. Mittal and K K. Birla have explained the meaning of an expert as under:- "An 'expert', really means a person who because of his training or experience is qualified to express an opinion whereas an ordinary witness is not competent to do [2]". In Ramesh Chandra Agarwal v. Regency Hospital Ltd., it was opined that "an 'expert' is a person who devotes his time and study to a special branch of learning. However, he might have acquired such knowledge by practice, observation or careful study"[3].

III. EXPERT EVIDENCE

According to Steven H. Gifis-Dictionary of Legal Terms –Testimony given by an expert witness, in his capacity as such constitutes 'expert evidence'. Oxford Dictionary of Law defines 'opinion evidence' as "Evidence of the opinions or beliefs of a witness, as opposed to evidence of facts about which he can give admissible evidence". Thus, the evidence of an expert is in the nature of opinion evidence which is different from that of fact. 'Expert evidence' can be used to assist the court in determining the issues in a case where it is relevant and where the opinion of an expert is needed to give the court a greater understanding of those issues. This guidance is intended to give prosecutors practical guidance on issues relating to the prosecution and defence as they arise during the life of a case. In Sitaraman Nai v. Puranmal Sonar, the term "opinion" was explained. It was stated that "the term 'opinion' means something more than mere relating of gossip or hearsay; it means judgment or belief, that is, a belief or conviction resulting from what one thinks on a particular question"[4].

In Arshad v. State of A.P., it was opined that "The expert evidence has two aspects, the 'data evidence' and the 'opinion evidence'. The data evidence cannot be rejected if it is inconsistent to oral evidence but the opinion evidence is only an inference drawn from the data and would not get precedence over the direct eye witness testimony unless of course, the inconsistency between the two is so great as to obviously falsify the oral evidence[5]". Here the data can be understood as facts.

IV. PRINCIPLES OF EXPERT EVIDENCE

According to Phipson, the cardinal principle of the law of evidence states that the best evidence should be adduced before a court of law. This rule is known as Best-Evidence rule. Best-Evidence means the evidence collected through the direct source. Derivative and second-hand evidence shall be excluded. As a general rule, the opinions, inferences, beliefs and mere speculations of witnesses are inadmissible before a court of law. The exception of the above-mentioned rule is the

'expert evidence'. Expert testimony is admissible on the principle of necessity. The help of experts is necessary when the question involved is beyond the range of common experience or common knowledge or where the special study of a subject or a special training or skill or special experience is called for. 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"[6].

V. EVIDENTIARY VALUE OF EXPERT EVIDENCE UNDER INDIAN EVIDENCE ACT, 1872

Evidentiary value of experts is dealt with under section 45 to 51. Section 45 of the evidence act lays down that the 'opinion of the expert' is a relevant fact and is admissible in evidence. Example – the question is, whether the death of A was caused by poison. The opinion of experts as to the symptoms produced by the poison by which A is supposed to have died are relevant. The judiciary has interpreted the evidentiary value of expert evidence on various considerations. In State v. Madhukar, it was held 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"[7]. In State of Maharashtra v. Domus Gopinath Shinde and others, it was held that "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"[8]. In Malay Kumar Ganguly v. Sukumar Banerjee, it was held that "A court is not bound by the evidence of experts which is to a large extent advisory in nature"[9].

VI. KINDS OF EXPERT OPINION

VII.1 GENERAL FIELDS

The S. 45 is an exception to the rule the general rules regarding the exclusion of opinion evidence. The relevancy of opinion of experts, generally, as per section 45, with several judgements of courts are reflected hereunder. These are the general kinds of expert opinion specifically stated in the phraseology of the section itself.

VII.1.1 Foreign law – Foreign law is a law which is not in force in India. "The prevailing idea under the common law in England and the United States has been that foreign law is a fact and must be proved as a fact; courts will not take judicial notice of foreign laws"[10]. In Aziz Bano v. Mohammad



Ibrahim Hussain, "it was held that foreign law is a question of fact, with which courts in India are not supposed to be conversant. Opinions of experts on foreign law are allowed to be admitted"[11].

VI.I.2. Science or Art – The term “science or art” is to be broadly construed, the term ‘science’ not being limited to the higher sciences, and the term ‘art’ not being limited to fine arts, carried beyond the common pursuits of life into that of artistic and scientific action. The meaning of the word ‘science as understood ordinarily with reference to its dictionary meaning must be attributed to the word as used in section 45 of the Indian Evidence Act. The Oxford Encyclopaedic English Dictionary – “Science is a systematic and formulated knowledge, especially of a specified type or on a specified subject”. Collins Dictionary of the English Language: - “Science is a systematic study of the nature and behaviour of the material and physical universe, based on observation, experiment and measurement, and the formulation of laws to describe these facts in general terms”. In *Selvi v. State of Karnataka*, it was opined that “if the science itself is imprecise, expert opinion is only of corroborative value and insufficient to secure a conviction by itself”[12].

VI.I.3. Identity of handwriting – Sections 45 and 47 of the Evidence Act prescribe the method by which signature can be proved. Under section 45, opinion of the handwriting expert is relevant, while under section 47, the opinion of any person acquainted with the handwriting of the person who is alleged to have signed the document, is admissible. The Apex court in *Murari Lal v. State of M.P.*, held that “the opinion of the handwriting expert is required to be carefully considered and examined because of the reason that the science of identification of the handwriting is not so perfect that it excludes the chance of the risk”[13].

VI.I.4. Identity of finger impression – The evidence of finger impression is admissible, but the person giving his opinion as in other cases must be an expert. In *Mahmood v. State of U.P.*, “where an expert had given no reasons in support of his opinion, nor was it shown that he possessed special skill, knowledge and experience in the science of identification of fingerprints”, the Supreme Court did not consider it safe to rely upon his opinion, even if it was supposed to be admissible under section 45 (identification of fingerprints)”[14].

VI.II SPECIFIC FILEDS

Section 45 of the Indian Evidence Act, 1872 discusses the relevancy of evidence of an expert in certain fields like foreign law, science, art, handwriting or finger expressions. These are the general categories of expertise. To understand the evidentiary value of opinion on *specific fields* coming before the court of law, it is pertinent to refer to some leading cases on the following –

VI.II 1. Opinion of the medical expert:

In *Parhlad v. State of Haryana*, it was held that “The opinion of the Medical Officer is to assist the court as he is not a witness of fact and the evidence given by the Medical Officer is really of an advisory character and not binding on the witness of fact”[15]. In *State of Haryana v. Bhagirath*, it was held that “the court is not bound by the opinion of the medical expert, but has to form its own opinion”[16]. In *Anil Rai v. State of Bihar*, it was held that “where medical evidence shows that there are two possibilities, the one consistent with direct evidence should be accepted” [17].

VI.II.2. Opinion of handwriting expert: In *Ram Narain v. State of U.P.*, it was held that “if after comparison of disputed and admitted writings by the court itself, it is considered safe to accept the opinion of the expert, then the conclusion so arrived at cannot be attacked on special leave merely on the ground that comparison of handwriting is generally considered hazardous and inconclusive. It should be noted that the evidence of experts is not final or conclusive. The court may satisfy itself before relying on the expert opinion”[18]. In *Murari Lal v. State of M.P.*, it was held that “there is no any rule of prudence which has crystallized into a rule of law that opinion evidence of a handwriting expert must never be acted upon unless substantially corroborated. But having due regard to the imperfect nature of the science of identification of handwriting, the approach should be one of caution. Reasons for the opinion must be carefully probed and examined”[19]. In *Magan Bihari Lal v. State Of Punjab*, it was held that “Expert’s evidence as to handwriting being opinion evidence can rarely if ever, take the place of substantive evidence and before acting on such evidence, it would be desirable to consider whether it is corroborated either by ‘direct evidence’ or by ‘circumstantial evidence’. “The evidence of a handwriting expert like any other evidence is to be appreciated, scrutinised in accordance with the law and accepted only if it is found trustworthy”[20].

VI.II.3. Opinion of authors: In *State of M.P. v. Sanjay Rai*, it was held that “in substance, though such views may have a persuasive value yet they cannot always be considered to be authoritatively binding, even to dispense with the actual proof otherwise reasonably required of the guilt of the accused in a given case. Such opinions cannot be elevated to or placed on a higher pedestal than the opinion of an expert examined in a court and the weight ordinarily to which it may be entitled to or deserves to be given”[21].

VI.II.4. Ballistic expert: “Ballistics’ is that part of forensic science which deals with the study of the motion of projectiles. A projectile is known as a body projected by force mostly from firearms, especially through the air. The science of projectile thus involves the study of firearms”[22]. A ballistic expert may trace a bullet or cartridge to a particular



weapon from which it was discharged. Forensic ballistics may also furnish opinion about the distance from which a shot was fired and the time when the weapon was last used. As far as evidentiary value is concerned, in *Arava Nagreddi v. State*, it was held that "the services of a ballistics expert is necessary and valuable in cases where firearms are recovered either at the scene of the crime or from the accused"[23].

In *Ghurey Lal v. State of U.P.*, where the question arose about the complicity of the accused in the murder of the deceased, the Supreme Court relied on the ballistic report to hold that the two shots allegedly fired causing the death of one and injuries to another were not from a single firearm, as alleged by the prosecution. The Court opined, "the medical evidence coupled with the 'Ballistic Expert' report revealed the existence of two fires from two weapons and as such was inconsistent with the prosecution story. The Ballistic Expert is a disinterested, independent witness who has technical knowledge and experience. It follows that the trial judge was fully justified in placing reliance on his report"[24].

VI.II.5. Evidence of tracking/sniffer dogs:

Trained dogs are used for the detection of crime. The trainer of tracking dogs can give evidence about the behaviour of the dog. The evidence of the tracker dog is also relevant under section 45 of the Indian Evidence Act, 1872. In *Abdul Razak v. State of Maharashtra*, The Supreme Court held that "evidence of the trainer of tracking dog is relevant and admissible in evidence, but the evidence can't be treated at par with the evidence of scientific experts analyzing blood or chemicals. The reactions of blood and chemicals can't be equated with the behaviour of the dog which is an intelligent animal with many thought processes similar to the thought processes of human beings. Whenever the thought process is involved there is the risk of error and deception"[25]. The law is made clear by the Supreme Court by enunciating the principle that the evidence of dog tracking is admissible, but not ordinarily of much weight and not at par with the evidence of scientific experts.

VI.II.6. Opinion on forensic evidence:

In *Selvi v. State of Karnataka*[26], it was discussed that as far as criminal law is concerned ballistic experts, forensic

experts, scientists who decide the legitimacy or identity by DNA tests, chemical examiners, psychiatrists, radiologists and even track-dogs play a vital role in the investigation of crimes. S. 45 of Indian Evidence Act, 1872 does allow expert opinions in certain cases. However, this section is silent on other aspects of forensic evidence that can be admissible in court in criminal proceedings.

VII. RECENT CASES ON EXPERT EVIDENCE

Pattu Rajan v. State of Tamil Nadu, Observed that "the cases where the science involved, is highly specialized and perhaps even esoteric, the central role of an expert cannot be disputed. One cannot lose sight of the fact that DNA evidence is also in the nature of opinion evidence as envisaged in Section 45 of the Indian Evidence Act"[27].

Balvir Singh v. State of Madhya Pradesh, held that "indecisive opinion given by experts would not affect prosecution case"[28].

Chauhan Aaminmiya Mohamadhusen and another v. State of Gujarat, held that "in case of variance between ocular and medical evidence, normally preference shall be given to ocular evidence"[29].

K. Ramajayam alias Appu v. Inspector of Police, Chennai, it was held that "opinion of an expert cannot be challenged on the ground that police have violated certain procedural law such as police standing orders"[30].

VIII. CONCLUSION

The expert evidence is a weak type of evidence and the courts do not consider it conclusive. It is, therefore, not safe to rely upon it without seeking independent and reliable corroboration.

ACKNOWLEDGMENT

None

REFERENCES

- [1] *Kashmir Law Journal*, p. 74, 1974
- [2] *All India Report*, ALD. 133, 1989
- [3] *All India Report* SC 806, 2010
- [4] *All India Report* Ori, p. 176, 1985
- [5] *CrLJ* p.2893, 1996
- [6] *All India Report* SC,120, 1994
- [7] *CriLJ*, 167, 1967
- [8] *All India Report* SC 1691, 2000

- [9] *All India Report* SC 1162, 2010
- [10] Otto C. Sommerich & Benjamin Busch, "The Expert Witness and the Proof of Foreign Law" *Cornell Law Quarterly*, Vol. 38(2), p. 127, 1953
- [11] *All India Report*, All, p. 720, 1925
- [12] *All India Report*, SC, p.1974, 2010
- [13] *All India Report*, SC, p.531, 1980
- [14] *All India Report*, SC, p. 69, 1976
- [15] *All India Report*, SCW, 4512



-
- [16] *All India Report* , SC, p. 2005, 1999
 - [17] *All India Report* , SC, p. 3173, 2001
 - [18] *All India Report*, SC, p.2200, 1973
 - [19] *All India Report* , SC, p.531, 1980
 - [20] *All India Report*, p.1091, 1977
 - [21] *All India Report* , SC, p. 2174, 2004
 - [22] Gupta Rashika, Ballistics: the probative value of evidence. *Cri LJ* , p.121, 1992
 - [23] *MJHR* (Cr) 1968. 12.
 - [24] *All India Report*, SCW, p.6598, 2008
 - [25] *All India Report*, SC, p. 283, 1970.
 - [26] *All India Report* ,SC, p.1974, 2010
 - [27] *All India Report* , SC, p. 1674, 2019
 - [28] *CrLJ*, SC. p 4100, 2019
 - [29] *CrLJ*, p.2641, 2016
 - [30] *CrLJ* ,p.1542, 2016