

Expert Evidence and Its Relevance

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Abstract: Judges of Indian Courts are thoroughly well versed with the laws that are in force in the territories of India, which helps them with the just adjudication of both civil and criminal cases. However, sometimes the judges are ceased with certain issues which are beyond their areas of expertise for which the judges need to rely on the opinion of people who are especially skilled to deal with such issues. These especially skilled people or “experts” thus often play an important role in the adjudication of cases. The research paper aims to discuss the value and relevance of expert evidence in Indian Courts.

Keywords: Expert Evidence; Section 45 Indian Evidence Act; opinion of expert

I. INTRODUCTION

In day to day parlance if we interpret the phrase Expert Opinion and analyse it then it would be construed to mean - an opinion or suggestion which is given by one who is an expert in a particular sphere of skill or in any field, may it be science, art, law or any other technical field. For the purposes of this paper, we confine ourselves to discuss the concept as is envisaged by S.45 of Indian Evidence Act, 1872.

On thorough reading of section, we see that the framework of the section has enumerated different fields or areas on which the experts may give their opinion like foreign law, science, art, fingerprints, handwriting to name a few. The section does not have comprehensive approach because at the time of framing of the Indian evidence Act some other spheres of Science were not known. So, the important point is the very meaning of the words Expert and Opinion which may enable us to tackle the advancements in other fields upon which the court may from time to time take the opinion of the expert.

An Expert can be any person having a special knowledge or skill on the subject concerned on or about which he is to testify in the court. The job of an expert is to help and try to conclusively determine and bring to rest, the issues in dispute by providing the court with the scientific or technical

insight, which might be outside the knowledge and experience of judge who is an expert in law alone. Section 45 gives the definition of an expert as an especially skilful person. In order to determine whether the person is an expert to give an opinion on the matter, we need to see whether he is a skilled person and does he have requisite knowledge on the matter he is about to testify as a witness¹. The person must take the permission of the court and normally testify about the facts rather than the law in the matter in which he is testifying. The judge should make sure that the concerned expert is qualified on the matter which is disputed issue and that only relevant and reliable opinions are accepted from him. There is none and can never be any threshold test for the admissibility of expert evidence in the court which takes into account its reliability as well. It is up to the judge’s discretion to accept his testimony or not. The expert is just a tool and his opinion is not a binding one. Expert witness can be appointed to help the court, either by the consent of both the parties to the case or proceeding, or by the court. Their opinion is useful in both civil and criminal cases. The paper deals with the analysis of the expert opinion as mentioned

¹. Monir, M. C.J., “*Textbook on The Law Of Evidence*” Universal Law Publishing Co., New Delhi, Eighth Edition at p. 201, see also U.S. Shipping Board v. Ship st. Albans 1931 PC 189

under section 45 of Indian Evidence act, 1872

II. EXPERT OPINION: WHO IS AN EXPERT

The section suggests that the person who is about to testify as an expert must be “Especially skilled” on the matter he is to testify. This is what section 45 gives us about the expert opinion. The section does not refer to or tell any touchstone apart from this. No standard of education or study in any field has been given in order to consider a person as an expert. Generally speaking a person is dubbed an expert if he is skilled or well informed about the matter of which he is the purported expert² of. The expert must thus be a person having ample knowledge and experience on the matter.

It is the discretion of the court to take the expert advice on any matter and is thus also its duty to check the veracity of the person claiming to be an expert. The adequate question which has to be determined is “is he peritus?, is he skilled, has he the adequate knowledge³.”

As discussed earlier there is no formal qualification or touchstone which has to be considered in order to determine the expertise of an expert. The case of *Abdul Rahman v. State of Mysore*⁴, the Mysore High Court was of the opinion that the opinion of the goldsmith as to the purity of the gold was relevant as being that of an expert, even though he did not have any qualification apart from his experience as the goldsmith. There is no requirement as to strict educational qualification in order to determine the expertise of a person. A person who may be an expert in one case may not be so for some other matter, and hence it would vary from case to case.

² Singh, Avtar, “Principles of the law of evidence” Central law Publication, Allahabad, Twentieth edition, 2013 at p. 243

³ Id.

⁴ Singh, Avtar, “Principles of the law of evidence” Central law Publication, Allahabad, Twentieth edition, 2013 at p. 243 : 1972 crlj 407

In another case, the traffic policemen having the requisite experience was held to be an expert when it came to determine the fatality of an accident between two motor vehicles. In a case⁵ where the court had to determine and certify the disability of a person, the principle of one of the schools for the deaf and dumb was invited to give his expert opinion on the matter as an expert.

In the case of *James and Co, v. SWRHA*⁶ the matter before the court demanded the court to determine the effect of delay on the cost of construction, the court invited an expert on the matter saying that an expert might be qualified by skill or even by professional qualifications.

III. WHAT CAN EXPERTS OPINE UPON

By virtue of section 45 and section 5 wherein the former terms the expert opinion to be relevant fact and the latter declaring that evidence may only be given of either facts in issue or that or relevant facts, the expert opinion is an admissible evidence under the Indian evidence act. The spheres and realm in which the expert testimony may be taken, as mentioned by the section is foreign law, science, art, the identity of handwriting or finger – impressions. Although the language of the section makes the list exhaustive the Law related to expert advice has developed and broadened with the development and advancements of science in every area. If the words: science or art are interpreted in a narrow sense, it would exclude many areas upon which expert opinion is made and admitted by the court. The matters related to trade, handicrafts, ballistics, DNA analysis, lie detector tests etc would be left out of the periew of the expert opinion.

⁵ Kishan Singh v. N. Singh air 1953 P. & H. 373

⁶ Singh, Avtar, “Principles of the law of evidence” Central law Publication, Allahabad, Twentieth edition, 2013 at p. 244.; (1984) 25 Build L.R. 56

When there is a question as to determining the disability of a person or that of the relation between the delay in construction and inflation in prices(as in the cases mentioned earlier), the court could not be able to take expert opinion on such matters which may come before it. Thus in so far as science and art as categories of expert opinion is concerned, they are to be broadly interpreted so as to include all areas on which an opinion of an expert is necessarily needed by the court.

Foreign law-

The first matter on which the expert can opine upon is the foreign law. The foreign law would be one which is not prevalent in India and thus the courts would not know about them. In one of the cases, The Allahabad High Court came to the conclusion that even though a law may have foreign origins, but if it is the law of the land in India, then it would not be foreign law and thus not to be opined upon by the experts.⁷ Again, in a prominent case it was held that in order to establish the conclusion on the foreign law, the advice of experts from both side has to be admitted.⁸

Matters of Science and of Art-

The term “matter of science and art” has to be interpreted in a very broad way, and thus it would not merely include fine arts or pure theories of science. As observed by Davis, J in *Aitchison and co. V. U.S.* - art in its legal significance embraces every operation of human intelligence whereby something is produced outside nature.⁹ He suggests

⁷ Aziz Bano v. Mohammad Ibrahim Hussain.

⁸ Technip SA v. SMS Holding Pvt Ltd

⁹ . Monir, M. C.J., “ *Textbook on The Law Of Evidence*” Universal Law Publishing Co., New Delhi, Eighth Edition at p.202

that the term science and art is broad enough to include all the matters upon which the court may need an expert person’s advice so as to resolve the issue in question.¹⁰ The matter, if the judge is equally acquainted with the nuances, must not be commented upon by the expert. Thus the expert opinion must only be sought when it is deemed necessary.

Hand Writing and Finger Prints-

The opinion of experts is also taken when there is a question of handwriting. The settled law is that the opinion of the handwriting expert is of a frail nature as compared to that of the finger print expert.¹¹ Thus there must not be too much reliance on the opinion of the handwriting expert who may fail to see the fallibilities. It has also been held¹² that the opinion of handwriting expert may not be needed when there are witnesses who have attested to the document.

The finger print of a man is unique in its own sense that no two people have ever had the same finger prints. This head was added to the section in 1899 after an amendment. The science as to finger prints has developed enormously so as to make it highly reliable and admissible in the court of law. It has been made more reliable than the opinion of the writing expert in some cases.¹³

Other Spheres Where Expert Opinion is Admissible-

The pre requisites of having an expert opinion is that firstly the subject matter is such that the expert testimony is necessary, secondly the witness in

¹⁰ id

¹¹ . Monir, M. C.J., “ *Textbook on The Law Of Evidence*” Universal Law Publishing Co., New Delhi, Eighth Edition at p. 206

¹² State of assam v. Upendra Nath

¹³ Lal,Batuk, “*The law of Evidence*” , Central Law Agency, Allahabad, Twentieth edition,2013 At p. 336

question is really an expert, and third that he is a truthful witness.¹⁴ As with the view of Davis, J, it is quite necessary for us to construe the terms of the section in much wider way and not in its strict sense. It is to be done in order to cope up with the advancements of science and technology. The courts in India have been in much sync with the views of Davis, J and have broadened the areas in which the court can seek expert opinion. To mention a few there are the Narco analysis, DNA test, Ballistics, Fire arms expert to name a few.

a) Ballistics- the ballistics expert is one who studies the firearms the bullets and its trajectories. Ballistics experts play an important role in today's criminal law. The opinion of the ballistics expert is not to be sought every now and then, and is to be sought only when there is a need to corroborate with the medical and ocular evidence. If a more reliable or direct evidence is available then an expert might not be consulted.¹⁵

b) DNA test- the DNA test can be employed, as under the expert's opinion to see as to the relations between two living beings. It is quite relevant in both civil and criminal cases. The Supreme Court has observed that the test must not be referred to as a routine and must be done only when needed.¹⁶

c) Narco Analysis and Brain Electrical Activation Profile. - these test if conducted without the permission of the subject shall be inadmissible, but if the subject consents to the test then the results are admissible under the Evidence Act¹⁷. Thus there arises a need to need the opinion of the expert when it comes to the said tests.

¹⁴ Lal,Batuk, "The law of Evidence", Central Law Agency, Allahabad, Twentieth edition,2013 at p. 331

¹⁵ . Monir, M. C.J., " Textbook on The Law Of Evidence" Universal Law Publishing Co., New Delhi, Eighth Edition at p. 210

¹⁶ Mon 211, Banarasi Dass v. Teeku Dutta. 2005 (3) ALD 78 SC

¹⁷ Lal,Batuk, "The law of Evidence", Central Law Agency, Allahabad, Twentieth edition,2013 at p. 339: Selvi v. State of Karnataka.

IV. EVIDENTIARY VALUE OF EXPERT OPINION

The value of the testimony of a witness depends on the rightful inferences he himself makes out of the matter assigned, by using his special skill, knowledge, and experience. The opinion of an expert is nevertheless an evidence and one needs to be cautious about its veracity as it may sometimes not be conclusive one. In order to take expert evidence as a substantial one, one needs to corroborate it with other facts. The opinion of the expert is not binding upon the court and its veracity and gravity has to be tested and done by the judge who has to be cautious in doing so.

The opinion of the expert shall not be a valid piece of evidence unless like other witnesses the expert is also subjected to cross examination, in order to establish his statements as truthful . In the landmark case of *State of Maharashtra v. Damu Gopinath Shinde*¹⁸ it has been held by the Supreme 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 so as to extract the grain from the chaff, i.e. to take the relevant part and discard the opinion which is without any basis.¹⁹

Whenever there is any discrepancy or inconsistency between the opinion of the medical expert's opinion and the eye witness's account of the event, there can be two modes of ascertaining the truth. One is, if the ocular evidence seems to be more reliable and conclusive then to take it as the basis and to rebut the expert testimony. Secondly if the expert medical

¹⁸ Lal,Batuk, "The law of Evidence", Central Law Agency, Allahabad, Twentieth edition,2013 at p. 341: AIR 2000 SC 1691

¹⁹ . Monir, M. C.J., " Textbook on The Law Of Evidence" Universal Law Publishing Co., New Delhi, Eighth Edition at p. 20

opinion fits better in the frame of circumstances, then to rely on the medical opinion and to view the ocular testimony in the light of the medical opinion.²⁰ Thus in case of variance in the medical opinion and the ocular evidence, ocular evidence gets primacy. Yet, if the ocular evidence is found to be totally inconsistent, then the evidence has to be appreciated in a different perspective under which the medical opinion may supersede the ocular evidence.

V. CONCLUSION

The expert opinion as mentioned in section 45 of the Indian evidence act is a safeguard against all the complexities that arise because of the lack of knowledge of the judges on various extra legal issues that need to be addressed to while dealing with the cases that come up before the court. As discussed, an expert just has to be a specially skilled person in the field he is to give his opinion. An expert needs to be ascertained by the court as having the requisite know how on the subject matter that may vary from the case to case. The expert has to be cross examined, and his opinion is merely of a suggestive nature which is not binding on the court in any way. Thus in some cases, the opinion of the expert, where it appears on the face of it to be non corroborative, must not be given too much of weight. Whenever there is any discrepancy or inconsistency between the opinion of the medical expert and the eye witness's account of the event, the evidence has to be appreciated with caution under which the medical opinion may or may not, depending upon the facts and circumstances of the case, supersede the ocular evidence.

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²⁰ Lal,Batuk, "*The law of Evidence*" , Central Law Agency, Allahabad, Twentieth edition,2013 at p. 342